

UW JURY INSTRUCTION ISSUE

Several years ago, the UW statute and Aggravated UW statutes were found to be unconstitutional as a “flat ban on carrying ready-to-use guns outside the home.” Moore v. Madigan, 702 F.3d 933, 936 (2012), People v. Aguilar, 2013 IL 112116, 377 Ill.Dec. 405, 2 N.E.3d 321.

Thereafter, effective July 10, 2015, the legislature amended section 24-1(a)(4) of the UW statute, by adding the concealed carry exception in subsection (a)(4)(iv).

The amendment provided that subsection (a)(4) “does not apply to or affect transportation of weapons that, *** are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act. Accordingly, the version of the UW statute in effect after the amendment “excepts from its reach those who have a valid license under the Firearm Concealed Carry Act.”

The old statute read as follows:

Section 24-1(a)(4) of the UW statute at that time stated:

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

(4) 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.

However, after 2013, 5/24-1 was amended to include a 4th exception:

(iv) are carried or possessed in accordance with the Firearm Concealed Carry Act by a person who has been issued a currently valid license under the Firearm Concealed Carry Act.

The I.P.I. Jury instruction has not been updated subsequent to the statute's amendment, and the relevant portion reads:

DEFINITION:

A person commits the offense of unlawful use of weapons when he knowingly (carries) (possesses)] a firearm in a vehicle except when on his land, in his abode, or in his fixed place of business.

ISSUES:

To sustain the charge of unlawful use of weapons, the State must prove the following propositions:

First Proposition: That the defendant knowingly [(carried) (possessed)] a firearm in a vehicle; and

Second Proposition: That when the defendant did so, he was not on his land, in his abode, or in his fixed place of business.

Clearly, none of the exceptions listed in the statute as (i), (ii), (iii) and/or (iv) are elements of the offense requiring the State to disprove the exception.

However, in October of 2024, the Illinois Supreme Court issued its opinion in People v. Harvey, 2024 IL 129357, 250 N.E.3d 265, reh'g denied (Nov. 25, 2024).

Below is an excerpt from People V. Harvey (which was a bench trial):

Harvey focuses on the concealed carry exception set forth in subsection (a)(10)(iv) of the statute. Harvey contends that, to sustain his conviction for UUW, the State had to prove that he did not fall within the concealed carry exception by showing he had not been issued a currently valid CCL at the time of the stop.

The State, in response, does not dispute that it had the burden of showing that Harvey did not fall within the concealed carry exception under subsection (a)(10)(iv). See People v. Laubscher, 183 Ill. 2d 330, 335, 233 Ill.Dec. 639, 701 N.E.2d 489 (1998) ("When an exception appears as part of the body of a substantive offense, the State bears the burden of disproving the existence of the exception beyond a reasonable doubt in order to sustain a conviction for the offense."). However, the State contends it was not required to show that Harvey had not been issued a currently valid CCL. Instead, according to the State, to establish that Harvey did not fall within the concealed carry exception, it only had to show that Harvey failed to produce a CCL at the time of the traffic stop.

In section 70(f) of the Carry Act, the legislature specifically exempted any person who has a valid CCL from prosecution under section 24-1(a)(10) of the UUW statute. It follows, therefore, that the only individuals who could potentially face liability under section 24-1(a)(10) of the UUW statute are those persons who do not have a valid CCL. Thus, it was not enough for the State to show that Harvey did not present a CCL at the time of the stop. To establish liability under section 24-1(a)(10) and to meet its burden of showing that the concealed carry exception did not apply, the State had to show that Harvey had not been issued a valid CCL.

...we agree with Harvey that, to prove the offense of UUW under section 24-1(a)(10)(iv), the State was required to show that he had not been issued a currently valid CCL.

Although People v. Harvey dealt with 24-1(a)(10), the four exemptions (i)(ii)(iii) and (iv) are identical to the four exemptions in (a)(4).

If the State bears the burden of disproving the existence of the exception beyond a reasonable doubt in order to sustain a conviction for the offense, it would seem logical that the jury, as the trier of fact, must find this exception has been disproved beyond a reasonable doubt as part of the jury instruction. Otherwise, the jury is being told that if they find only two of three issues had been proven beyond a reasonable doubt, then the defendant should be found GUILTY.

An issue that remains unclear is the language from Harvey that reads:

When an exception appears as part of the body of a substantive offense, the State bears the burden of disproving the existence of the exception beyond a reasonable doubt in order to sustain a conviction for the offense.”

Harvey explains what “the body of a substantive offense” actually is, only by citing People v. Laubscher, 183 Ill. 2d 330, 335, 701 N.E.2d 489, 491 (1998)

Laubscher states that “When an exception appears as part of the body of a substantive offense, the State bears the burden of disproving the existence of the exception beyond a reasonable doubt in order to sustain a conviction for the offense.”

However, Laubscher was referencing the italicized portion of:

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

* * * * *

(4) Carries or possesses * * * 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 * * *.”

Although the exceptions in the Unlawful Use of Weapons statute (i), (ii), (iii) and (iv) appear to be AFTER the “body of a substantive offense” the Harvey decision seems to incorporate the exception into it.

What isn't clear, or addressed, are the remaining exceptions in (i), (ii) and (iii). Those exceptions have never been included as part of the jury's issues instruction, and are NOT addressed in the HARVEY decision. So, if those aren't included, it's odd that only (iv) is included.

Although it's not authoritative, the Defendant's Appellate Brief stated:

When must the State prove a negative? ...the State must prove a negative when the Constitution requires it. Because “[t]he Second Amendment's plain text [] presumptively guarantees ... a right to ‘bear’ arms in public for self-defense,” *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, ___ U.S. ___, 142 S.Ct. 2111, 2135 (2022), the State cannot treat the possession of a firearm as presumptively illegal while demanding that the defendant prove his entitlement to the exercise of that constitutional right. Rather, in order to sustain a conviction for unlawful use of a weapon (“UUW”) under 720ILCS 5/24- 1(a)(10)(iv), the State must prove that an individual was not properly licensed in Illinois to carry a concealed firearm in public.

Also of note is that there is a standard rule that states that the prosecution need not negative any exemptions. The defendant shall have the burden of proving such an exemption. However, in the Harvey appeal, the State Appellate Prosecutor conceded that this Exemption Rule did not apply to the CCL exemption.

It was (iv) that made the statute facially constitutional, so perhaps its importance was more heavily weighed.