2025 IL App (1st) 230924-U

FIFTH DIVISION
March 21, 2025

No. 1-23-0924

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 21 CR 13505
	)	
CURTIS HANKTON,	)	Honorable
	)	James B. Linn and
Defendant-Appellee.	)	James B. Novy
	)	Judges Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justice Mitchell concurred in the judgment.
Justice Oden Johnson dissented.

ORDER

¶ 1 *Held*: Defendant's armed habitual criminal conviction is affirmed where (1) the evidence at trial was sufficient for the jury to find that he constructively possessed the weapon, (2) his motion to suppress was properly denied, and (3) the armed habitual criminal statute is not an unconstitutional restriction on the right to bear arms.

¶ 2 Defendant Curtis Hankton was convicted of being an armed habitual criminal (AHC) (720 ILCS 5/24-1.7(a) (West 2020)) and sentenced to six years in prison (720 ILCS 5/24-1.7(b) (West 2022); 730 ILCS 5/5-4.5-25(a) (West 2022)). On appeal, he argues that (1) the state failed to prove that he constructively possessed the gun found on the back seat of the vehicle where he was sitting,

(2) the trial court erred by denying his motion to suppress the gun as evidence recovered during an illegal search, and (3) the AHC statute is unconstitutional, both facially and as applied to him under these circumstances. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Mr. Hankton was charged with AHC, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon, in relation to a traffic stop that occurred on September 30, 2021. The State proceeded to trial only on the AHC charge. The evidence at trial established that Mr. Hankton was one of three occupants in a vehicle that police stopped for failing to display a Chicago city sticker. Following the stop, Chicago police officers Ilir Llika and Jorge Ulloa searched the car, finding three firearms. The officers found two guns in the front area of the car and one on the back seat, where Mr. Hankton was sitting. None of the vehicle's occupants had a firearm owner's identification (FOID) card or concealed carry license (CCL), and all three were arrested. A jury found Mr. Hankton guilty of AHC, and he received the minimum sentence of six years in prison.

¶ 5 A. Mr. Hankton's Motion to Suppress

¶ 6 Before trial, Mr. Hankton moved to suppress the gun found on the back seat of the vehicle, possession of which served as the basis for the AHC charge against him. He argued that at the time of the stop, the officers "had no reasonable suspicion that [he] was violating the law of any jurisdiction" and his conduct prior to arrest "was such as would not reasonably be interpreted by the arresting officers as constituting probable cause that [he] had committed or was about to commit a crime." Officers Llika and Ulloa testified at the hearing, and their body-worn camera footage was introduced as evidence. The trial court denied Mr. Hankton's motion, ruling that the search did not violate the fourth amendment.

¶ 7 Officer Llika testified that around 9 p.m. on September 30, 2021, while traveling

westbound on North Avenue, he and Officer Ulloa noticed a 2009 black Chevy Malibu driving past them in the opposite direction that did not display a Chicago city sticker. The officers ran the vehicle's license plate, verified that it was registered to an address in the City of Chicago, made a U-turn, and pulled the vehicle over on Pulaski Road. Officer Llika testified that there were three individuals in the car: the male driver, a female passenger in the front seat, and a male passenger he identified as Mr. Hankton in the back seat. Officer Llika noted that he immediately observed smoke blowing from inside the vehicle and, when the occupants rolled down their windows, he smelled a strong odor of burnt cannabis. Both the driver and Mr. Hankton were smoking cigarettes. Officer Llika did not tell the occupants of the vehicle that he smelled burnt cannabis, he explained, because although he believed he and Officer Ulloa had probable cause to search the vehicle, he preferred to wait for another police unit to arrive. He and Officer Ulloa were outnumbered, and he did not want the driver to flee. Officer Llika informed the driver that he was not going to issue him a ticket for the city sticker violation. He then stepped back to briefly confer with Officer Ulloa, who had just finished running the driver's licenses of the car's occupants.

¶ 8 Officer Llika testified that he walked back to the driver's side window and asked the driver whether he had a medical marijuana card. The driver responded that he did not. Officer Llika then asked the driver if he had anything else that was cannabis-related. The driver handed over a small plastic baggie of raw cannabis. The State asked Officer Llika on cross-examination whether the cannabis complied with a Chicago ordinance requiring it to be in a sealed, odor-proof, and child-proof container, "that you can legally possess and purchase cannabis in," and the officer said that it did not. The driver was ticketed for having a small amount of improperly packaged cannabis.

¶ 9 Officer Llika asked the driver if he could search the vehicle, and the driver responded no. Officer Llika ordered the three occupants out of the car, and all complied. Officers Llika and Ulloa

then searched the car. They found a total of three guns, two in the front seat and one—"a 45 caliber 2 tone firearm"—in the back seat of the vehicle where Mr. Hankton had been sitting. The search did not reveal any additional cannabis. The two guns in the front of the car were located on the front right passenger seat, where the female passenger had been sitting before the search was conducted. One was in a black fanny pack, and the other was in a multi-colored fanny pack that the female passenger removed from her person and left on the front passenger seat when she exited the vehicle.

¶ 10 Officer Ulloa then noticed and showed Officer Llika the muzzle of a firearm protruding from under a black T-shirt on the back seat. When asked on cross-examination if that was "right next to" where Mr. Hankton had been sitting, Office Llika said, "He was sitting on top if it." The State asked, "Literally on top of the shirt?" and Office Llika said, "Yes." Officer Llika explained that with Mr. Hankton no longer sitting in the back seat, the firearm was in plain view. The Officers asked the three occupants whether they had FOID cards or CCLs, and all three responded that they did not.

¶ 11 Office Llika testified on redirect examination that no partially burned cannabis was recovered from the car. He agreed that at least two of the three occupants were smoking ordinary cigarettes when the stop occurred. He also agreed that the occupants were compliant and "obeyed every single thing [he] asked them to do." When asked why he was worried the driver might flee, Office Llika said the driver "was nervous during the duration of the stop."

¶ 12 Officer Ulloa also testified at the hearing, and his testimony was consistent with Officer Llika's. Officer Ulloa approached the car from the passenger side. He also smelled burnt cannabis when the windows were rolled down. He believed that Mr. Hankton, the rear passenger, had "just like lit a cigarette at that time." Officer Ulloa agreed with defense counsel that the cannabis the

driver handed over was packaged but added that it was "not properly packaged."

¶ 13 The footage from the officers' body-worn cameras was introduced at the hearing on the motion to suppress, and it is generally consistent with their testimony. The footage from Officer Llika's camera shows him walking up to the 2009 black Chevy Malibu and informing the driver that he is being pulled over for not having a city sticker. The driver complies with Officer Llika's request to relinquish his driver's license and insurance information. During this time, Officer Ulloa requests the licenses of the two passengers. Officer Ulloa runs searches on all three of the licenses, which takes less than five minutes, while Officer Llika and the driver have a casual conversation regarding Chicago city stickers.

¶ 14 Officer Ulloa returns, and he and Officer Llika step away from the vehicle to have a brief conversation concerning the burnt cannabis smell, the possibility of the driver fleeing, and whether backup has been requested. Officer Llika suggests that they "just ask him," saying, "if he takes off, he takes off." He approaches the car again, now approximately five minutes into the stop, and asks the driver whether he has a medical marijuana card. The driver responds no. Officer Llika then asks, "How much weed you guys got in there? We don't trip about weed man, as long as it's not like a pillow-case full." The driver hands over a small, knotted plastic bag containing raw cannabis, to which Officer Llika says, "That's it?" He then asks whether the occupants have any more marijuana in the car and if his partner can check it for additional marijuana. The driver responds no to both questions. Officer Llika presses, explaining that he will not be doing his duty if he does not search the car. He tells the driver to "hop out," the search will be quick, and they will be on their way. The driver complies. Mr. Hankton also exits the car, and both are directed to place their hands on the police vehicle located behind the Chevy Malibu. The female passenger is told to stay in the car. Mr. Hankton and the driver are then handcuffed together by Officer Llika.

The female passenger in the front seat is alone in the car for approximately one minute before she also exits the car.

¶ 15 Officers Llika and Ulloa then search the vehicle. They find and open two fanny packs, one black and one multi-colored, in the front seat where the female passenger was sitting. Officer Llika asks her whether she has a FOID card or CCL, and she responds no. Officer Llika then handcuffs her and walks back to the vehicle. Officer Ulloa alerts Officer Llika that there is a firearm on the back seat. The officers walk back to the police vehicle and ask, "you got a FOID or concealed carry?" Any response is inaudible, but the officers next separately handcuff Mr. Hankton and the driver. Officer Llika again returns to search the car. He opens both fanny packs, displaying a loaded handgun inside each, and retrieves a third loaded handgun from under a T-shirt on the back seat of the vehicle where Mr. Hankton was sitting.

¶ 16 Defense counsel argued in support of the motion to suppress that there were a number of problems with the stop. According to counsel, once the officers decided not to issue a ticket for the failure to display a city sticker, the investigative stop made pursuant to *Terry v. Ohio*, 392 U.S. 1 (1967), was over. "Everyone gets to go home," he insisted. It was not permissible, counsel argued, for the officers to come back to the car and start asking questions that were "not even remotely related to the reason for the stop." And, counsel continued, "there was nothing in this interaction *** that reasonably gave them probable cause to search [the] vehicle." It was, in counsel's words, a "fishing expedition," and "[t]here was no reasonable articulable suspicion or probable cause to search."

¶ 17 The State made no argument.

¶ 18 The trial court, which had earlier asked and been told by the assistant State's attorney that, despite Officer Llika's assurances to the driver, a ticket had in fact been issued for the failure to

display a city sticker, believed the officer told the driver he would not be getting a ticket for that infraction simply to "calm the waters" and "make sure that everything remain[ed] under control." He "want[ed] to buy some time because he [saw] there [were] three people in this car," the judge explained. "Looking at all of the totality," the judge concluded, "I don't find that there is offense of Fourth Amendment by the way the police conducted themselves."

¶ 19 B. The Evidence at Trial

¶ 20 A jury trial was held on March 22, 2023. Officers Llika and Ulloa generally testified consistently with their prior testimony at the hearing on Mr. Hankton's motion to suppress. Officer Llika explained that he and Officer Ulloa were assigned to a routine patrol on the evening of September 30, 2021, and explained to the jury how the traffic stop and search came about.

¶ 21 The same body-worn camera footage depicting the officers' interactions with the vehicle's occupants was played for the jury at trial. Officer Llika also identified for the jurors some still photographs taken from that footage, including a photo of the muzzle of the gun sticking out of the T-shirt on the rear passenger seat.

¶ 22 On cross-examination, both officers agreed that they never saw Mr. Hankton with a weapon in his hands and that they never saw him trying to tuck anything under his legs or make any movements that would make them think he was concealing something. They agreed that Mr. Hankton was not acting nervous and did not attempt to flee.

¶ 23 Officer Llika acknowledged that he did not know who placed the weapon on the back seat of the vehicle, when Mr. Hankton had entered the vehicle, or how long he had been in the car prior to the traffic stop. He agreed that the back seat of the car was "not very tidy," and that there were "a lot of items" on the rear driver's side seat. Officer Llika confirmed on cross-examination that the female passenger was alone in the car while the officers patted down and handcuffed the driver

and Mr. Hankton. On redirect, however, he testified that he did not notice any movements from the female passenger that would have indicated she did anything suspicious when she was alone in the car.

¶ 24 The parties then stipulated to the following: (1) an evidence technician in the Chicago Police Department's firearms lab would testify that he examined the firearm found on the back seat of the vehicle, the magazine, and seven bullets, and found fingerprints only on the magazine; (2) a latent print examiner would testify that those prints were not suitable for identification; and (3) Mr. Hankton had previously been convicted of two qualifying felony offenses under the laws of Illinois.

¶ 25 The State rested, the trial court denied Mr. Hankton's motion for a directed verdict, and Mr. Hankton presented no evidence.

¶ 26 The State argued in closing that Mr. Hankton constructively possessed the gun because he was sitting directly on it and therefore had the power and intent to exercise control over it.

¶ 27 Defense counsel argued in response that Mr. Hankton's calm and cooperative demeanor pointed to the fact that he did not possess the gun in question. Counsel argued that the female passenger could have placed the weapon on the rear passenger seat while Mr. Hankton and the driver were being detained.

¶ 28 The jury found Mr. Hankton guilty of AHC.

¶ 29 Defense counsel moved for a new trial, arguing, among other things, that the State had failed to prove Mr. Hankton guilty beyond a reasonable doubt of possessing the gun, and the trial court had erred in denying his motion to suppress. Counsel argued that "the *Terry* stop was over within minutes after the officers told the driver that they [were] not going to issue a ticket for the city sticker violation, the original reason for the traffic stop," and "it was not permissible for the

officers to then ask the occupants questions that [were] not related to the original reason for the traffic stop, in this case questions about the smell of cannabis." The court denied the motion and sentenced Mr. Hankton to the minimum sentence of six years.

¶ 30 Mr. Hankton now appeals.

¶ 31 II. JURISDICTION

¶ 32 Mr. Hankton was sentenced on May 16, 2023, and he timely filed his notice of appeal the same day. We have jurisdiction over this appeal under article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 (eff. Feb. 6, 2013) and 606 (eff. Apr. 15, 2024), governing appeals from final judgments in criminal cases.

¶ 33 III. ANALYSIS

¶ 34 Mr. Hankton argues on appeal that his AHC conviction should be reversed because (1) the State failed to prove beyond a reasonable doubt that he was in possession of the gun found on the back passenger seat of the vehicle, (2) the trial court erred by denying his motion to suppress, and (3) section 24.1-7 of the Criminal Code of 2012 (the AHC statute), facially violates the Second Amendment to the United States Constitution and violates Article I, Section 22 of the Illinois Constitution, both facially and as applied to him.

¶ 35 A. Sufficiency of the Evidence

¶ 36 We first address Mr. Hankton's sufficiency argument. "The State has the burden of proving beyond a reasonable doubt each element of an offense." *People v. Gray*, 2017 IL 120958 ¶ 35 (citing *Jackson v. Virginia*, 443 U.S. 307, 315-316, (1979), and *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009)). "When the sufficiency of the evidence supporting a criminal conviction is challenged, '[t]he relevant inquiry is whether, 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. Ramos*, 2020 IL App (1st) 170929, ¶ 57 (quoting *People v. Ward*, 215 Ill. 2d 317, 322 (2005)). Our role as the reviewing court is not to retry the defendant. *Gray*, 2017 IL 120958, ¶ 35. Rather, "[i]t is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* We will find that the evidence was insufficient to support a conviction only if it is "so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *Id.*

¶ 37 To prove Mr. Hankton guilty of AHC, the State had to prove that he had two prior qualifying felony convictions and that he knowingly possessed a firearm. 720 ILCS 5/24-1.7(a) (West 2020); *People v. Ramirez*, 2023 IL 128123, ¶ 22 (holding that knowledge is the appropriate mental state for a possessory offense). Possession may be actual or constructive. *People v. Love*, 404 Ill. App. 3d 784, 788 (2010). Here, Mr. Hankton does not dispute his two prior qualifying felony convictions. And the State does not contend that Mr. Hankton was in actual possession of the weapon. The only question is whether the State presented sufficient evidence to establish that Mr. Hankton constructively possessed the firearm found on the back seat of the vehicle.

¶ 38 To establish constructive possession of a firearm, "the State must prove beyond a reasonable doubt that the defendant (1) knew a firearm was present; and (2) exercised immediate and exclusive control over the area where the firearm was found." *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10. Although knowledge may be inferred from the circumstances, one's mere presence in a vehicle where a gun is found is insufficient to prove knowledge. *People v. Crumpton*, 2024 IL App (1st) 221651, ¶ 11. Factors from which the defendant's knowledge of a weapon can be inferred are: " '(1) the visibility of the weapon from defendant's position in the car, 2) the period of time in which the defendant had an opportunity to observe the weapon, 3) any gestures by the defendant indicating an effort to retrieve or hide the weapon, and 4) the size of the weapon.' " *Id.*

(quoting *People v. Bailey*, 333 Ill App. 3d 888, 891-892 (2002)). This list of factors is not exclusive; the trier of fact should also consider any other relevant circumstantial evidence of knowledge, "including whether the defendant had a possessory or ownership interest in the weapon or in the automobile in which the weapon was found." *Id.*

¶ 39 Mr. Hankton argues that he did not have knowledge or exclusive control of the gun sufficient to establish constructive possession because the back seat of the vehicle was cluttered, messy, and dark. He points out both that he was not the owner of the car and that the female passenger was left alone in the car for a period of time while the officers were busy detaining the driver and him.

¶ 40 We believe the State did present sufficient evidence for the jury to find that it had proved beyond a reasonable doubt that Mr. Hankton constructively possessed the weapon. A reasonable juror could have inferred beyond a reasonable doubt based on the factors listed above that Mr. Hankton had knowledge of the gun found in the back seat. The first two factors, the visibility of the weapon from Mr. Hankton's point of view and the amount of time in which he had an opportunity to observe it, both weigh in favor of a finding that he knew the gun was there. Officer Ulloa's testimony was that Mr. Hankton was "sitting on" the gun, that it was right "underneath" his leg. The weapon would have been visible when Mr. Hankton sat down on the seat. He would have observed it immediately upon entering the vehicle. Even if he did not, he certainly would have felt it beneath him when he sat down on it. The messiness of the driver's side of the passenger seat is also irrelevant, since the weapon was found on the passenger side of the seat directly where Mr. Hankton was sitting.

¶ 41 The third factor, regarding Mr. Hankton's gestures or movements, does not weigh in favor of a finding of knowledge. As evidenced by the body-worn camera footage, Mr. Hankton was

cooperative and cordial with the officers. He was neither visibly nervous nor anxious during the traffic stop and subsequent search.

¶ 42 The last factor, the size of the weapon, weighs in favor of Mr. Hankton knowing about the gun. The fact that the weapon was readily visible to Officer Ulloa from outside the vehicle, as it appears in still photographs from the body-worn camera footage, demonstrates that the handgun recovered was of considerable size.

¶ 43 Considered together, the relevant factors weigh in favor of a finding that Mr. Hankton knew about the weapon located in the back passenger seat of the vehicle.

¶ 44 A reasonable juror could also have found that Mr. Hankton had immediate and exclusive control over the area where the gun was found. Even though it was not his vehicle, and the fingerprint evidence from the weapon was inconclusive, Mr. Hankton still had exclusive and immediate control over the back seat area. He was the only individual in the back seat and was sitting on top of the weapon that was recovered. Although the female passenger was left unsupervised in the front seat of the vehicle for about one minute, nothing in the body-worn camera footage or testimony from the officers suggests that she tossed the weapon into the back seat. Loaded handguns were found in both of the fanny packs that were on the front passenger seat where the female passenger was sitting, including in the multi-colored fanny pack that she removed from her person before exiting the vehicle, and Mr. Hankton offers no explanation for why, if she initially possessed all three of the guns that were retrieved, she only tossed one of them onto the rear seat before exiting the vehicle. The traffic stop did occur at night, but both officers testified—and the body-worn camera footage confirms—that the street was well lit. Based on the evidence at trial, the short time that the female passenger was alone in the vehicle does not raise a reasonable doubt as to Mr. Hankton's immediate and exclusive control over the area where the weapon was

recovered.

¶ 45 The cases Mr. Hankton relies on in which a defendant was one of several occupants of a vehicle—*Bailey*, 333 Ill. App. 3d at 891, *People v. Hampton*, 358 Ill. App. 3d 1029, 1033 (2005), and *People v. Wise*, 2021 IL 125392, ¶ 34—are all distinguishable. Also distinguishable is our recent decision in *Crumpton*, 2024 IL App (1st) 221651, ¶¶ 10-18, where we found that the evidence was not sufficient to show that a front-seat passenger had constructive possession of a gun in the car.

¶ 46 The defendant in *Bailey*, as here, a passenger. *Bailey*, 333 Ill. App. 3d at 890. During their search, police officers found a handgun underneath the front passenger seat where the defendant was sitting. *Id.* The court explained that the State had failed to prove the defendant had knowledge of the weapon because it was not visible to him, his fingerprints were not on it, and the officers did not observe the defendant make any gestures that indicated he was trying to hide the gun. *Id.* at 892.

¶ 47 The defendant in *Hampton* was driving a car belonging to his deceased brother at the time of his arrest. *Hampton*, 358 Ill. App. 3d at 1033. The court reasoned that since the vehicle did not belong to the defendant, he had only driven it for a few minutes, and he did not make any movements to conceal the gun, no rational trier of fact could have found beyond a reasonable doubt that he knowingly possessed a handgun found in the car's glove compartment. *Id.*

¶ 48 The defendant in *Wise* was also the driver of a vehicle he did not own. *Wise*, 2021 IL 125392, ¶ 34. When the van in that case was searched, a gun was found in the third row back seat. *Id.* Our supreme court held that the defendant did not constructively possess the gun because, although he knew it was there, he did not have immediate and exclusive control over it. *Id.* ¶¶ 34, 39. The gun was 5 to 10 feet away from him, he did not own the van, the arresting officer did not

see him touch the gun, and the defendant's fingerprints were not on the gun. *Id.* ¶ 34.

¶ 49 In *Crumpton*, the defendant was one of five occupants of a car. *Crumpton*, 2024 IL App (1st) 221651, ¶ 3. He was sitting in the front passenger seat. *Id.* The gun was recovered from underneath that seat, but it was not visible unless one looked directly under the seat. *Id.* ¶ 12. The gun was also relatively small. *Id.* There was no evidence that anyone in the car made a movement to place the gun there, and it was unclear whether it had been placed there from the front passenger seat or from the rear seat. *Id.* ¶¶ 5, 14, 16.

¶ 50 These cases are readily distinguishable from Mr. Hankton's situation. Unlike in *Bailey*, where the recovered weapon was not visible to the officers, and was in fact underneath the defendant's seat, here, the weapon was readily visible to Officer Ulloa when Mr. Hankton exited the vehicle. Officer Ulloa testified that he saw the muzzle of the handgun protruding from the black T-shirt directly on top of the seat where Mr. Hankton had been sitting.

¶ 51 *Hampton*, where officers found a gun located inside a tube sock in the vehicle's glove compartment (*Hampton*, 358 Ill. App. 3d at 1033), is distinguishable for the same reason. Additionally, unlike in *Hampton*, where the fact that the defendant had only been in the vehicle for a few minutes made it unreasonable to conclude that he knew about a gun in the glove compartment, here, *any* amount of time sitting directly on the gun in question would have made its presence known to Mr. Hankton.

¶ 52 Further, unlike the driver in *Wise*, who knew about the presence of a weapon located 5 to 10 feet away in the third-row passenger seat of a van but could not reach the weapon (*Wise*, 2021 IL 125392 at ¶ 34), here, Mr. Hankton was sitting directly on top of the gun and thus clearly had exclusive control over the area where it was found.

¶ 53 Finally, in contrast to *Crumpton*, there was ample evidence that Mr. Hankton had

knowledge of the gun since it was relatively large, and he was sitting on top of it.

¶ 54 When viewed in the light most favorable to the State, a rational trier of fact could have found that Mr. Hankton knew of the gun's presence and had immediate and exclusive control over the area where the gun was found. The evidence presented at trial was thus sufficient for the jury to find Mr. Hankton guilty of AHC based on constructive possession.

¶ 55 B. Mr. Hankton's Motion to Suppress

¶ 56 We next address Mr. Hankton's argument that the trial court erred by denying his motion to suppress. The fourth amendment to the United States Constitution (U.S. Const., amend. IV) and article I, section 6, of the Illinois Constitution of 1970 (Ill. Const. 1970, art. I, § 6) both guarantee the right of individuals to be free from unreasonable searches and seizures. *People v. Almond*, 2015 113817, ¶ 56. On a motion to suppress, the defendant bears the burden of establishing a prima facie case that the challenged evidence was obtained through illegal seizure. *People v. Gipson*, 203 Ill. 2d 298, 306-07 (2003). When reviewing the denial of a motion to quash an arrest and suppress evidence, we apply a "two-part standard of review." *People v. Grant*, 2013 IL 112734, ¶ 12. "While we accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence, we review *de novo* the court's ultimate ruling on a motion to suppress involving probable cause." *Id.*

¶ 57 "Subject to only a few exceptions, a warrantless search or seizure outside of the judicial process is *per se* unreasonable." *People v. Spain*, 2019 IL App (1st) 163184, ¶ 22. One of those exceptions provides that an officer may conduct a warrantless search of a vehicle if the search is supported by probable cause—a showing that the totality of the facts and circumstances known to the officer at the time of the search would justify a reasonable person in believing that the vehicle contains contraband or evidence of criminal activity. *People v. Hill*, 2020 IL 124595, ¶¶ 22-23.

Probable cause "is a flexible, commonsense standard" that "deals with probabilities, not certainties." (Internal quotation marks omitted.) *Id.* ¶ 24. An officer need not rule out all innocent explanations for suspicious facts before determining that probable cause exists. *Id.*

¶ 58 In *Terry v. Ohio*, 392 U.S. at 30, the United States Supreme Court also held that, absent probable cause, a police officer may stop an individual for temporary questioning where the officer "observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot." In Illinois, this requirement is codified in section 107-14 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/107-14 (West 2020)). To initiate a *Terry* stop, an officer must have "more than an inarticulate hunch." *People v. Colyar*, 2013 IL 111835, ¶ 40. The officer must instead "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." (Internal quotation marks omitted.). *Id.* In assessing whether a *Terry* stop was justified, the facts must be considered, not "with analytical hindsight" but "from the perspective of a reasonable officer at the time that the situation confronted him or her." *People v. Thomas*, 198 Ill. 2d 103, 110 (2001).

¶ 59 Here, Mr. Hankton argues that the officers unreasonably prolonged the traffic stop beyond the time necessary to deal with the city sticker violation to "buy some time" to establish probable cause to search the car. He contends that, following the legalization of recreational cannabis, the smell of burnt cannabis alone did not give the officers the reasonable suspicion of criminal activity necessary to detain them and continue questioning them once the city sticker violation was resolved. He separately argues that the totality of the circumstances known to the officers at the time of the search did not give them probable cause to search the vehicle.

¶ 60 1. Whether the Officer's had Probable Cause to Search the Vehicle

¶ 61 We first consider whether the officers had probable cause to search the vehicle. If they did

not, then we need not reach the question of whether they improperly extended the *Terry* stop to afford them the opportunity to establish probable cause. Officers Llika and Ulloa testified that they smelled burnt cannabis as they approached the vehicle. When the parties submitted their briefing in this case, our supreme court had not yet decided whether, following the legalization of cannabis for recreational use in 2020, the smell of burnt cannabis alone could still establish probable cause to search a vehicle. The court has since answered that question in the negative.

¶ 62 In *People v. Redmond*, 2024 IL 129201, ¶ 5, cited as supplemental authority by Mr. Hankton, an officer stopped the defendant for having an improperly secured license plate. The officer approached the vehicle and, when the defendant rolled down the passenger-side window, smelled burnt cannabis and searched the car, finding a plastic bag containing about 1 gram of cannabis in the center console. *Id.* ¶¶ 5, 11. The trial court granted the defendant's motion to suppress, and the appellate court affirmed, holding that the smell of burnt cannabis alone, with no other corroborating circumstances, was not enough to establish probable cause to search the vehicle. *Id.* ¶ 15.

¶ 63 Our supreme court agreed. *Id.* ¶ 54. It explained that there is now "a myriad of situations where cannabis can be used and possessed" in Illinois, and "the smell resulting from that legal use and possession is not indicative of the commission of a criminal offense." *Id.* at ¶ 47. The smell of burnt cannabis within a vehicle thus did not necessarily suggest criminal activity, and the totality of the facts known to the arresting officer, including the absence of any sign that the driver was impaired, did not provide probable cause to search the vehicle. *Id.* ¶ 66. The *Redmond* court reasoned that while the smell of burnt cannabis is a factor that *informs* whether an officer has probable cause to search a vehicle, standing alone it is not enough; other corroborating circumstances, such as "signs of impairment" or "drug paraphernalia or evidence of cannabis use

in the car" must be present for a warrantless search to be permissible. *Id.* ¶¶ 54, 60. The holding in *Redmond* applies to searches, like the one at issue here, conducted "on or after January 1, 2020." Id. ¶ 66.

¶ 64 Based on the totality of the circumstances, we believe that by the time they initiated their search of the vehicle, the officers here did have probable cause. They did not search based on the smell of burnt cannabis alone, which could indicate lawful or unlawful conduct, but only when the driver of the vehicle voluntarily relinquished a knotted baggie of cannabis that violated section 11-502.15 of the Illinois Vehicle Code (625 ILCS 5/11-502.15 (West 2020)). That section makes it unlawful to possess cannabis "within the passenger area of [a] motor vehicle upon a highway in this State" (with "highway" defined as any publicly maintained way used for vehicular travel (625 ILCS 5/1-126 (West 2020)), unless it is "in a secured, sealed or resealable, odor-proof, child-resistant cannabis container that [was] inaccessible." *Id.* § 11-502.15(c). Once the baggie was handed over, the driver's conduct could only be classified as unlawful, and the officers had probable cause, under *Redmond*, to search the car for more contraband or evidence of criminal activity.

¶ 65 Further confirming this is *People v. Molina*, 2024 IL 129237, decided by our supreme court just before we held oral argument in this appeal. The question there was whether the smell of raw cannabis, as opposed to burnt cannabis, provided an officer with probable cause to search a vehicle. *Id.* ¶ 1. The court concluded that it did. *Id.* ¶ 61. Unlike the odor of burnt cannabis, it explained, the odor of raw cannabis coming from a vehicle "reliably points" to unlawful conduct—the possession of improperly packaged cannabis in violation of the Vehicle Code. ¶ 55. If probable cause to search a vehicle exists, as in *Molina*, where officers reasonably infer the presence of improperly packaged cannabis from the smell of raw cannabis, then certainly it exists where the

driver has handed over the improperly packaged cannabis itself. Probable cause clearly existed here at the time the officers searched the vehicle.

¶ 66 2. Whether the Officers Improperly Prolonged the Traffic Stop

¶ 67 We next address whether the officers were permitted to ask the questions that led the driver to relinquish the baggie of improperly packaged cannabis or whether, as Mr. Hankton maintains, those questions improperly prolonged the *Terry* stop beyond its initial purpose, rendering the driver's relinquishment of that contraband involuntary.

¶ 68 Generally, consensual encounters with the police, including the voluntary relinquishment of contraband, constitute neither a search nor a seizure under the fourth amendment. *People v. Gherna*, 203 Ill. 2d 165, 177 (2003) (noting that "consensual encounters do not implicate the fourth amendment"). Where an initially lawful search, or in this case a *Terry* stop, is improperly prolonged, however, the voluntariness of an individual's cooperation with the police may be questioned.

¶ 69 In *Gherna*, for example, officers observed a young woman and a girl sitting in a pickup truck in a parking lot. *Id.* at 168. The officers observed a beer bottle in a cup holder in the center console between the two of them and suspected possible underage drinking. *Id.* They detained and questioned the occupants, determining that the driver was over twenty-one, the passenger was her thirteen-year-old daughter, and the beer bottle was unopened in its original container. *Id.* The officers did not end the stop there, though. They asked her to exit the car, and the driver complied, telling the officers they were free to search the vehicle. *Id.* at 169. As she was emptying her pockets, a plastic baggie fell out containing cocaine. *Id.* Our supreme court held that although the officers' initial encounter with the driver constituted a valid *Terry* stop, once they had concluded that no criminal violation had occurred, the reason for the stop had ended, and their continued

detention of the driver constituted an unreasonable seizure that tainted the consent she gave them for the search. *Id.* at 182-83; see also *People v. Brownlee*, 186 Ill. 2d 501, 519-22 (1999) (motion to suppress granted where officers elected not to issue a ticket for the driver's failure to stop at a stop sign but, lacking reasonable suspicion of any other illegal activity, went on to ask if they could search the car anyway).

¶ 70 As the United States Supreme Court explained in *Rodriguez v. U.S.*, 575 U.S. 348, 354 (2015), "[a] seizure for a traffic violation justifies a police investigation of *that* violation." (Emphasis added.) "Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure's 'mission'—to address the traffic violation that warranted the stop." *Id.* "[A] traffic stop can become unlawful if it is prolonged beyond the time reasonably required to complete [that] mission." (Internal quotation marks omitted.) *Id.*

¶ 71 Mr. Hankton's position is that there was one mission here—the investigation of a city sticker violation—and the officers had no right to continue questioning the occupants of the vehicle once that mission was complete. But the facts in this case demonstrate that there were two overlapping investigations: the city sticker violation *and* a possible cannabis-related violation of the Vehicle Code. The first mission may have ended when the officers told the driver that they had elected not to issue a ticket for the failure to display a city sticker, but the second mission—asking the driver and occupants whether they had a medical marijuana card or more marijuana in the car—had not yet concluded. And this second investigation was separately justified based on the smell of burnt cannabis.

¶ 72 Our supreme court made clear in *Redmond* that although the smell of burnt cannabis does not give rise to probable cause to search a vehicle, it does give rise to a reasonable suspicion of criminal activity and can thus justify an investigative *Terry* stop. *Redmond*, 2024 IL 129201, ¶ 63.

The *Redmond* court noted that the arresting officer's detection of "the strong odor of burnt cannabis coming from the vehicle *certainly established reasonable suspicion to investigate further*" (emphasis added), and the officer then "reasonably investigated whether [the defendant in that case] had violated the Vehicle Code and whether [he] was driving impaired." *Id*.

¶ 73 Here, the entire time that elapsed between when the vehicle was stopped and when the baggie of cannabis was produced was only about five minutes. This stop was not unduly extended, and it is clear that at least one of the officers' investigations based on a reasonable suspicion of criminal activity was still ongoing when the contraband was produced. Mr. Hankton's argument that the search was illegal because the investigative stop was illegally prolonged must be rejected.

¶ 74 C. Constitutionality of the AHC Statute

¶ 75 Finally, we address Mr. Hankton's second amendment and proportionate penalties arguments. Mr. Hankton contends that the armed habitual criminal statute (720 ILCS 5/24-1.7 (West 2020))) violates the second amendment to the United States Constitution because it does not comply with the framework established by the United States Supreme Court in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). Mr. Hankton further posits that the AHC statute violates Article I, Section 22 of the Illinois Constitution, both on its face and as applied to him.

¶ 76 The constitutionality of a statute is a matter of law, which we review *de novo*. *People v. Ligon*, 2016 IL 118023, ¶ 11. In analyzing challenges, such as these, to the constitutionality of a statute, "we begin with the presumption that the statute is constitutional and that, if reasonably possible, this court must construe the statute so as to affirm its constitutional validity." *Id.* Although Mr. Hankton did not raise these arguments in the trial court, a constitutional challenge to a criminal statute may be raised at any time. *People v. Mosley*, 2015 IL 115872, ¶ 21.

¶ 77 1. The Second Amendment

¶ 78 Mr. Hankton argues that the AHC statute, which bars individuals found guilty of two qualifying felonies from ever possessing a firearm, violates the second amendment on its face because there is insufficient evidence to prove the existence of permanent, status-based revocation of the right to bear arms during the founding-era period of history, a requirement established by the Supreme Court in *Bruen*. "A statute will be deemed facially unconstitutional only if there is no set of circumstances under which the statute would be valid." *People v. Bochenek*, 2021 IL 125889, ¶ 10. Thus, a facial challenge fails if any situation exists where the statute could be validly applied. *People v. Davis*, 2014 IL 115595, ¶ 25.

¶ 79 The second amendment provides: "A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In 2008, the United States Supreme Court issued its decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), holding that the second amendment elevated the "right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 635. The second amendment applies to the States through the fourteenth amendment to the United States Constitution. *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010).

¶ 80 Under *Heller* and *McDonald*, courts developed a two-step test to assess second-amendment challenges to firearm regulations. See *People v. Smith*, 2024 IL App (1st) 221455, ¶ 11. First, the government can justify the regulation by establishing that the regulated activity fell outside the scope of the second amendment as it was originally understood. *Id.* Conduct falling outside the second amendment's original scope is "categorically unprotected." (Internal quotation marks omitted.) *Id.* For conduct falling within the amendment's original scope, the court proceeds to the second step and conduct a "means-end analysis," weighing "the severity of the regulation against

the ends the government sought to achieve" in enacting it. *Id.*

¶ 81 In *Bruen*, the Court announced a new analytical framework for evaluating the constitutionality of firearm regulations under the second amendment. *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 68, *pet. for leave to appeal pending*, No. 130153 (Oct. 30, 2023) (citing *Bruen*, 597 U.S. at 17-20). Under *Bruen*, a court must first determine whether "the Second Amendment's plain text covers an individual's conduct." *Bruen*, 597 U.S. at 24. If it does, then the Constitution "presumptively protects that conduct" and the government must do more than "simply posit that the regulation promotes an important interest"; it must justify the regulation by showing that it "is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 17, 24. To make this showing, the government must point to historical precedent establishing what the founders understood the second amendment to mean. *Id.* at 24-25.

¶ 82 We reject Mr. Hankton's argument that the AHC statute violates the second amendment based on our understanding that, as interpreted by the United States Supreme Court in *Bruen*, the second amendment does not restrict laws that prohibit gun possession by felons. Rather, the holding in that case applies to laws that attempt to regulate gun possession of "law-abiding citizens." See *People v. Baker*, 2023 IL App (1st) 220328, ¶ 37, *pet. for leave to appeal pending*, No. 130174 (filed Nov. 3, 2023) (rejecting the defendants as-applied constitutional challenge to the unlawful use of a weapon by a felon (UUWF) statute); see also *People v. Mobley*, 2023 IL App (1st) 221264, ¶¶ 27-29, *pet. for leave to appeal pending*, No. 130417 (filed Jan. 31, 2024) (same).

¶ 83 Mr. Hankton's facial challenge to the AHC statute—which, like the UUWF statute in *Baker* and *Mobley*, restricts individuals with prior felony convictions from possessing firearms—must fail for the reasons that the challenges failed there. See *Bochenek*, 2021 IL 125889, ¶ 10, ("A statute will be deemed facially unconstitutional only if there is no set of circumstances under which

the statute would be valid."); see also *People v. Burns*, 2024 IL App (4th) 230428, ¶¶ 18-22, *pet. for leave to appeal pending*, No. 130804 (June 21, 2024) (rejecting the defendant's facial challenge to the UUWF statute under the reasoning in *Baker*).

¶ 84 Mr. Hankton asks us to follow the reasoning in *Brooks*, 2023 IL App (1st) 200435, ¶ 89, where we found that a defendant's status as a felon is irrelevant under the first step of the *Bruen* analysis and "is more properly evaluated under the second step's historical tradition analysis." He then embarks on a lengthy discussion of historical precedent, arguing that there are no historical analogues for permanent bans on the possession of firearms based solely on one's status as a habitual offender. But even if we did follow this aspect of the reasoning in *Brooks*, we agree with the remainder of the analysis in that case concluding that sufficient historical precedent exists to ban felons from possessing firearms. See *id.* ¶ 90 (rejecting a facial challenge to the AHC statute); see also *People v. Travis*, 2024 IL App (3d) 230113, ¶¶ 27-33, *pet. for leave to appeal pending*, No. 130696 (May 16, 2024) (rejecting facial challenges to both the AHC and UUWF statutes). Indeed, the United States Supreme Court's repeated admonition that second amendment protection is available to law abiding citizens appears to be a determination that there is historical support for laws banning certain categories of persons from possessing guns.

¶ 85 Just after briefing in this appeal was complete, for example, the United States Supreme Court decided *United States v. Rahimi*, 602 U.S. 680 (2024). The Supreme Court in *Rahimi* held that a federal statute prohibiting individuals subject to domestic violence restraining orders from possessing firearms was constitutional on its face because "the Second Amendment permits the disarmament of individuals who pose a credible threat to the physical safety of others." *Id.* at 693. Although the court rejected the government's suggestion that the defendant in that case could be disarmed simply because he was not "responsible," it both confirmed that prohibitions on the

possession of firearms by felons are "presumptively lawful," and agreed that the second amendment does not bar the legislature from enacting laws that ban gun possession "by categories of persons thought by a legislature to present a special danger of misuse." *Id.* at 682, 699, 701-02,. *Rahimi* supports our conclusion that the AHC statute—a ban on the possession of firearms by individuals, like Mr. Hankton, who have two or more prior qualifying felonies—is constitutional on its face.

¶ 86 2. Article I, Section 22 of the Illinois Constitution

¶ 87 Lastly, we address Mr. Hankton's argument that even if the AHC statute does not violate the second amendment, it violates Article I, Section 22 of the Illinois Constitution, both facially and as applied to him. "While it is well established that a state *may* impose greater protections under its state constitution" (*Travis*, 2024 IL App (3d) 230113, ¶ 42), Mr. Hankton makes no compelling argument that Illinois has elected to do so here. Article 1, Section 22 provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed." Ill. Const. 1970, art. I, § 22. Mr. Hankton contends that this language provides him with more protection than the second amendment because the phrase "individual citizen" does not refer to a collective community, like "the people" does in the second amendment. We disagree.

¶ 88 There are two differences between this portion of the Illinois Constitution and the federal constitution. First, it replaces the language regarding the necessity of a well-regulated militia with the words 'subject only to police power.' *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483, 491 (1984). Second, it replaces "the people" with "the 'individual citizen.' " *Id.* (quoting Ill. Const. 1970, art. § 22). In *Kalodimos*, our supreme court said that the inclusion of the phrase "the individual citizen" was intended to "broaden the scope of the right to arms from a collective one applicable only to weapons traditionally used by a regulated militia to an individual right covering

a variety of arms." *Id.* However, the words "subject only to the police power" was intended "as a limitation on the liberty the provision affords." *Id.* The police power was intended to provide an extraordinary degree of control over the possession and use of arms due to the threat they pose to the safety and order of society. *Id.* at 491-492 (quoting Record of Proceedings, Sixth Illinois Constitutional Convention 88 (report of the committee on the bill of rights)). Thus, the court found that "the police power comprehends 'restraining or prohibiting anything harmful to the welfare of people.' " *Id.* at 496. Mr. Hankton's argument that the police power entails only the ability to regulate certain types of weapons, and not who can possess those weapons, is an overly narrow reading of *Kalodimos* that we find unconvincing. Even if, as Mr. Hankton suggests, the delegates at the 1970 Illinois Constitutional Convention were more concerned with regulating certain types of weapons, that does not mean that the broad term "police power" should be read to only to address such concerns.

¶ 89 We find that the AHC statute is a proper exercise of the state's police power, which allows the state to exert, through legislation, control over the dangers posed by firearms and people who might use them to do harm. *People v. Boyce*, 2023 IL App (4th) 2211130-U, ¶ 18. Since the legislature may "regulate certain aspects of gun possession and ownership," the AHC statute is constitutional. *People v. Robinson*, 2011 IL App (1st) 100078, ¶ 23 (citing *McDonald*, 561 U.S. 742). Mr. Hankton has failed to demonstrate the AHC statute violates the Illinois Constitution, either facially or as applied to him.

¶ 90 IV. CONCLUSION

¶ 91 For all the above reasons, we affirm Mr. Hankton's conviction for AHC.

¶ 92 Affirmed.

¶ 93 JUSTICE ODEN JOHNSON, dissenting:

¶ 94 The trial court erred by denying defendant's motion to suppress the gun as evidence recovered during an illegal search. Accordingly, I would reverse and remand for a new trial.

¶ 95 Here, defendant's arrest occurred after what should have been a routine traffic stop for the driver's failure to display a city vehicle sticker but evolved into an extended stop during which the officers engaged with the driver multiple times before ultimately searching the vehicle.

¶ 96 Although I question the officers' contention that the only reason they were alerted to the vehicle in question was that they noticed that a vehicle, travelling in the opposite direction, did not contain a city of Chicago sticker on the windshield, it is uncontroverted that this gave the officers a reasonable articulable suspicion to stop the vehicle that defendant was a passenger in.

¶ 97 What is in controversy however, and the cause for my dissent, is the unlawfulness of the officer's conduct following the initial stop as it relates to the second prong of the *Terry* analysis.

¶ 98 Following a lawful traffic stop, a police officer may, as a matter of course, order the driver and any passengers out of the vehicle pending the completion of the stop without violating the protections of the fourth amendment. *Staple*, 345 Ill. App. 3d at 820. The fact that an officer has a reason to stop a person, however, does not automatically justify any further intrusions such as a search for weapons. *Id.* As is well-settled law, an officer may subject a person to a limited search for weapons, commonly referred to as a "frisk," only if the officer reasonably believes that the person is armed and dangerous. *Id.* Further, the automobile exception permits the warrantless search of a vehicle with probable cause if the vehicle has evidence of criminal activity subject to seizure. *People v. James*, 163 Ill. 2d 302, 312 (1994). However, stopping a vehicle for a minor traffic violation does not justify searching the detainee's person or vehicle; rather, police officers must reasonably believe they are facing a situation more serious than a routine traffic violation.

People v. Contreras, 2014 IL App (1st) 131889, ¶ 28 (citing *People v. Jones*, 215 Ill. 2d 261, 271 (2005)). At the suppression hearing, the State's evidence came from the officers who were involved in the traffic stop that ultimately led to defendant's arrest. The officers testified that on September 30, 2021, at approximately 9 p.m., they were on patrol travelling westbound on North Avenue in Chicago. They saw a Chevy Malibu travelling eastbound that did not have a Chicago city sticker. The officers checked the car registration to confirm that it was registered in the city, and once confirmed, the officers made a U-turn and initiated a traffic stop. Three people were inside, including defendant, who was in the backseat. The officers stated that the defendant appeared nervous but he and the other occupants complied with the officers' requests. The officers noticed cigarette smoke coming from the vehicle- defendant and the driver were smoking. Both officers also stated that they smelled burned cannabis, but this was not noted in the police report. Officer Llika told the driver that he was not going to issue a ticket for the city sticker, which was the basis of the traffic stop.

¶ 99 The absence of a city sticker on a vehicle registered in Chicago was indeed a valid reason to stop and investigate the issue further, which the officers did. However, once Officer Llika told the driver that he was not going to issue a ticket for the city sticker, that should have been the end of the traffic stop, and the occupants should have been free to leave. But that is not what happened here. Instead, Llika stood behind the vehicle and conversed with his partner briefly before approaching the driver again to ask if he had a medical marijuana card. The driver replied that he did not and admitted that he had a small bag of cannabis that he handed over to the officers. The driver subsequently received a ticket for the cannabis. This should have been the end of this extended traffic stop at this point, but again, it was not. Officer Llika then asked the driver for permission to search the car and the driver did not consent. The officers then told everyone to exit

the vehicle so that it could be searched. The occupants complied, the vehicle was searched and no other cannabis or burnt ash was recovered. It was during this search that the firearms were recovered.

¶ 100 It is very clear that the firearms were not visible during the initial stop for the missing city sticker. It is also clear that they were not visible during the questionable extension of the stop when the cannabis was discovered, and the driver received a ticket for the cannabis. The record is clear, and the majority agrees that initial reason for the stop, the missing city sticker, was concluded when the officers told the driver that no ticket would be issued. However, unlike the majority, I agree with defendant that the subsequent detention was nothing more than an unlawful fishing expedition for a reason to arrest the occupants. This was shown by the officers' conduct of standing behind the car talking before approaching the driver a second time. Even if I agreed with the majority that there was probable cause for a "second mission of asking the driver and occupants whether they had a medical marijuana card or more marijuana in the car," that mission should have ended with the issuance of the ticket for cannabis to the driver. But it didn't: instead of allowing the occupants to leave, the officers asked to search the car. When consent was not given, the officers made the occupants exit the vehicle, searched the vehicle, and recovered the firearms. Both the extended stop and the search were very clearly outside the scope of the initial reason for the stop and were not reasonably related to the reason for that initial stop; thus, they did not meet the second prong of *Terry*.

¶ 101 Moreover, the totality of the circumstances does not show that the officers reasonably believed they were facing a situation more serious than a routine traffic violation to justify a search. Again, the reason provided for the initial stop was a missing city sticker. There was no testimony that the officers believed they were in any danger or anything more than a routine traffic stop.

Once the officers decided not to ticket the driver, the occupants should have been free to go. After the officers issued a ticket for the marijuana: again, the occupants should have been free to go. This was an unlawful extension of a valid *Terry* stop without any reasonable justification that resulted in the unlawful detention of the occupants while the officers manufactured reasons to search the car, all without probable cause. Therefore, I would determine that based on the lack of probable cause for defendant's search and seizure, the motion to suppress should have been granted. As such, I would reverse and remand for a new trial.