No. 4D25-1698

In the District Court of Appeal of Florida, Fourth District

JAYLEN TYRUS EUBANKS,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

ANSWER BRIEF OF THE STATE

On Appeal from the Circuit Court of the Seventeenth Judicial Circuit in Broward County
L.T. NO. 24-005748-CF10A

JAMES UTHMEIER
Attorney General

JEFFREY PAUL DESOUSA (FBN 110951)
Acting Solicitor General
NATHAN A. FORRESTER (FBN 1045107)
Chief Deputy Solicitor General
CHRISTINE K. PRATT (FBN 100351)
Assistant Solicitor General

Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399
(850) 414-3300
christine.pratt@myfloridalegal.com

CELIA TERENZIO (FBN 0656879)
Chief Assistant Attorney General

1515 N. Flagler Dr., Ste. 900
West Palm Beach, FL 33401
(561) 837-5016
CrimAppWPB@
MyFloridaLegal.com

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Counsel for the State of Florida

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INTRODUCTION AND SUMMARY OF ARGUMENT

Defendant-Appellant Jaylen Eubanks was 18 years old when he carried a concealed firearm in violation of Section 790.01(3), Florida Statutes. He pled no contest but reserved the right to appeal the denial of his motion to dismiss. In that motion he contended that the prohibition on concealed carry for 18-to-20-year-olds violated both the Second Amendment and Article I, Section 8 of the Florida Constitution. I.B. 16–36, 38–52.[1]

The State takes no position on the constitutionality of its concealed-carry prohibition insofar as it is accompanied by the right to carry firearms openly. In *McDaniels v. State*, 419 So. 3d 1180, 1193-94 (Fla. 1st DCA 2025), the First District Court of Appeal recognized a right to open carry under the Second Amendment, and the Attorney General thereafter announced that the State would not defend open-carry convictions under Section 790.053, Florida Statutes. But Eubanks committed his offense before the First District issued its opinion in *McDaniels*. At that time, due to the combined effect of Florida's

[1] In this brief, "I.B." refers to Eubanks' Initial Brief, and "R." refers to the Record on Appeal. The page numbers that follow refer to the page numbers in the PDF version of those documents. Emphasis is added unless otherwise noted.

open-carry and concealed-carry restrictions on 18-to-20-year-olds, Eubanks had no right to public carry of any kind. Because some means of public carry is guaranteed to the people under the history-and-tradition analysis set forth in *New York State Rifle and Pistol Association v. Bruen*, 597 U.S. 1, 24, 28-30 (2022), the State concedes that Eubanks' conviction violates the Second Amendment.

The State therefore recommends that this Court reverse the trial court's denial of his motion to dismiss the concealed-carry count against him, vacate his concealed-carry conviction, and vacate the portion of his sentence imposed because of his concealed-carry conviction.[2]

STATEMENT OF THE CASE AND FACTS

On May 23, 2024, officers from the Broward County Sheriff's Office received a 911 call reporting that a black male in black pants

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[2] Because the State concedes that Eubanks' conviction for concealed carry violates the Second Amendment, it takes no position on whether the restriction also violates Article I, Section 8 of the Florida Constitution. In addition, Eubanks' conviction for improper exhibition of a dangerous firearm still stands. R. 19-20. Eubanks has never challenged that conviction, nor is there any legal basis for him to do so. As the trial court sentenced Eubanks concurrently to 24 months of probation for concealed carry and 12 months of probation for exhibition of a dangerous weapon, Eubanks should still serve 12 months of probation for the latter offense. *Id.*

and a black hoodie was waving a pistol at passing cars. R. 13-15. The officers who arrived on the scene found Jaylen Eubanks walking nearby; he fit the description and they patted him down for weapons. R. 14. The pat-down uncovered "a black handgun located on the left side of his waist, unholstered." R. 14. They ran Eubanks' name and discovered that he was 18 years old. R. 14.

Eubanks claimed two men in a car "threaten[ed] him." R. 14. He admitted "he brandished his black handgun and placed it on the right side of his thigh in order to defend himself." R. 14. He "stated that he was in fear for his life and being from Pompano he gets 'ran up on' frequently," and "that he believed the males were going to run him over with their vehicle." R. 14. The officers released him on the scene but retained his handgun as evidence. R. 14-15. Eubanks was subsequently charged with carrying a concealed firearm, in violation of Section 790.01(3), Florida Statutes, and misdemeanor improper exhibition of a dangerous firearm, in violation of Section 790.10, Florida Statutes. R. 19-20.

Eubanks moved to dismiss the concealed-carry charge on the ground that it was unconstitutional "as applied" to him. R. 47-54. He argued that the Florida Legislature lacked authority to "legislate on

the subject of bearing arms" and in particular that the "categorical ban on carrying a concealed firearm by anyone between the ages of 18 [to] 20 violate[d] the Second Amendment." R. 47, 51.

The State defended the statute as a constitutional regulation of the manner of carry. R. 56-60. Following a hearing, R. 107-51, the trial court concluded that the statute was constitutional. R. 68-72. The court held that "the licensing scheme for concealed carry in Florida is designed to ensure that only law-abiding, responsible citizens are permitted to carry concealed firearms." R. 70-71. It viewed dicta and various concurrences in U.S. Supreme Court cases as indicating that concealed-carry regulations and shall-issue regimes with reasonable criteria were likely constitutional. R. 71-72. And it emphasized that Eubanks himself had "conceded that there [wa]s historical precedent" for concealed-carry restrictions. R. 72.

Eubanks entered a negotiated no-contest plea. R. 74-89, 95-105. The trial court withheld adjudication and sentenced Eubanks concurrently to 24 months of probation for the concealed-carry conviction and 12 months of probation for the exhibition-of-a-dangerous-weapon conviction. R. 104-05. The court issued its final order imposing a judgment of conviction on May 9, 2025. R. 74-89.

Eubanks reserved the right to appeal the order denying his motion to dismiss. R. 97, 103.

Eubanks then appealed, challenging his concealed-carry conviction only. R. 92-94.

STANDARD OF REVIEW

"Constitutional challenges to statutes are pure questions of law, subject to de novo review." *Jackson v. State*, 191 So. 3d 423, 426 (Fla. 2016). "Generally, statutes are presumed constitutional, and the challenging party has the burden to establish the statute's invalidity beyond a reasonable doubt." *Id.* "It is the Court's duty to 'construe challenged legislation to effect a constitutional outcome whenever possible.'" *Id.* (quoting *Fla. Dep't of Revenue v. Howard*, 916 So. 2d 640, 642 (Fla. 2005)).

"When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Bruen*, 597 U.S. at 24. If that test is met, "the burden [then] falls on [the government] to show" that its firearm restriction is "consistent with this Nation's historical tradition of firearm regulation." *Id.* at 33-34.

ARGUMENT

Because Eubanks had no legal means of carrying a firearm at all—either openly or concealed—at the time of his offense, state law deprived him of a "general right to public carry" as "guarantee[d]" by the Second Amendment. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 33 (2022). Historical tradition suggests that, at the very least, state bans on concealed carry were constitutional "only if they did not similarly prohibit *open* carry." *Id.* at 53. The State takes no position on whether a concealed-carry prohibition combined with a right to open carry would violate the Second Amendment. But Florida did "similarly prohibit open carry" at the time Eubanks committed his offense in 2024. Because the State cannot carry its burden of showing that a prohibition on all public carry is "consistent with this Nation's historical tradition of firearm regulation," *id.* at 34, the State concedes that Eubanks' concealed-carry conviction should be overturned.

I. Eubanks had no lawful means of public carry at the time of his offense.

Eubanks was 18 years old when he carried a concealed firearm. Florida law prohibits open carry for all law-abiding, adult citizens.

§ 790.053, Fla. Stat. (generally prohibiting open carry). Florida law also prohibits concealed carry unless an individual met the licensure requirements of Section 790.06(2), Florida Statutes. § 790.01(3), Fla. Stat.[3] One of those licensure requirements is to be 21 years old or older. § 790.06(2)(b), Fla. Stat.[4] Thus in 2024, Eubanks had no legal means of publicly carrying a firearm for self-defense.

Things have changed since then. In March 2025, the Attorney General announced that the State would not defend any convictions of 18-to-20-year-olds for the purchase of firearms in violation of § 790.065(13), Fla. Stat.[5] In September 2025, the First District ruled that the open-carry prohibition in Section 790.053 violated the Second Amendment. *McDaniels v. State*, 419 So. 3d 1180 (Fla. 1st DCA

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[3] To carry a concealed firearm in Florida, a person may either (a) obtain a license from the State by meeting the criteria set forth by § 790.06(2), or (b) "otherwise satisf[y] the criteria for receiving and maintaining" a concealed carry license under § 790.06(2). § 790.01(1)(b), Fla. Stat. This latter means of carrying a firearm without a license, commonly referred to as "constitutional carry," has been in effect since July 2023.

[4] Press Release, Governor Ron DeSantis, *Governor Ron DeSantis Signs HB 543—Constitutional Carry* (Apr. 3, 2023), https://tinyurl.com/mtz4b7xn.

[5] Attorney General James Uthmeier, X (Mar. 14, 2025, 16:07 EST), https://tinyurl.com/yyd2x2de.

2025). In keeping with *McDaniels*, the Attorney General then announced that the State would not defend any convictions of law-abiding adults—which includes 18-to-20-year-olds—for carrying firearms openly.[6] Thus today, Eubanks would have a legal means of publicly carrying a firearm for self-defense. But he did not when he committed his offense.

II. A complete prohibition on public carry of firearms violates the Second Amendment.

The Second Amendment guarantees law-abiding citizens the right "to keep and bear arms." U.S. Const. amend. II. This right applies both inside the home, *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008), and "outside the home," *Bruen*, 597 U.S. at 8. The Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment against the states. *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010).

Courts must assess Second Amendment claims under a two-step test. Courts first ask whether "the Second Amendment's plain text covers [the] individual's conduct." *Bruen*, 597 U.S. at 24. If it

[6] Attorney General James Uthmeier, X (Sept. 15, 2025, 10:50 EST), https://tinyurl.com/2tuap6f8.

does, courts then ask whether the government has carried its burden to "justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* The Supreme Court has "directed courts to examine our 'historical tradition of firearm regulation' to help delineate the contours of the right.'" *United States v. Rahimi*, 602 U.S. 680, 691 (2024). The fundamental "principle[] underlying the Second Amendment," *id.* at 692, and the "central component" underpinning the right to bear arms, is the right of "individual self-defense." *Bruen*, 597 U.S. at 29 (cleaned up).

A. Under Step One of *Bruen*, Eubanks is part of the "people" protected by the Second Amendment, and public carry is within the textual scope of the right to bear arms.

The first question under *Bruen* is whether the text of the Second Amendment "applies to a person and his proposed conduct." *Range v. Att'y Gen.*, 69 F.4th 96, 101 (3d Cir. 2023) (en banc), *vacated on other grounds sub nom. Garland v. Range*, 144 S. Ct. 2706 (2024).

For Eubanks, the first part of that question is whether 18-to-20-year-olds are part of the "people" protected by the Second Amendment. The State has taken the position that they are. *See NRA v. Bondi*, 133 F.4th 1108, 1130 (11th Cir. 2025) (en banc) ("the parties

assume that minors are among 'the people' protected by the Second Amendment"). Numerous courts have agreed. *See Lara v. Comm'r, Pa. State Police*, 125 F.4th 428, 438 n.16 (3d Cir. 2025); *Reese v. ATF,* 127 F.4th 583, 600 (5th Cir. 2025); *McCoy v. ATF*, 140 F.4th 568, 575 (4th Cir. 2025); *Rocky Mountain Gun Owners v. Polis,* 121 F.4th 96, 127 (10th Cir. 2024).

The second part of the question is whether the text of the Second Amendment covers Eubanks' asserted right to carry a firearm in public. It clearly does. The Supreme Court has explained that the "definition of 'bear' naturally encompasses public carry." *Bruen*, 597 U.S. at 32. To "bear" arms means to "carry" them "upon the person or in the clothing or in a pocket" so that a person can be "armed and ready for offensive or defensive action." *Heller*, 554 U.S. at 584 (quoting *Muscarello v. United States*, 524 U.S. 125, 143 (1998) (Ginsburg, J., dissenting)). That action can occur both in private and in public.

Eubanks has therefore passed Step One.

B. Under Step Two of *Bruen*, a blanket restriction on all means of public carry lacks a historical analogue and therefore violates the Second Amendment.

At Step Two of *Bruen*, the burden shifts to the government. To carry that burden, the State must identify historical regulations that

comparably burden the right to public carry that Florida's open and concealed carry restrictions together imposed on Eubanks in 2024. *Rahimi*, 602 U.S. at 692. Restrictions enacted long after the ratification of the Second Amendment "do not provide as much insight into its original meaning as earlier sources." *Heller*, 554 U.S. at 588; *see also Bruen*, 597 U.S. at 83 (Barrett, J., concurring) ("[T]oday's decision should not be understood to endorse freewheeling reliance on historical practice from the mid-to-late 19th century to establish the original meaning of the Bill of Rights.").

Our Nation's historical tradition demonstrates a clear "consensus that States could *not* ban public carry altogether." *Bruen*, 597 U.S. at 53 (emphasis in original). States had to provide some manner of public carry—usually, though not always, open carry. Indeed, early state supreme courts from Alabama, Louisiana, Tennessee, Indiana, Arkansas, and Georgia concluded that partial carry prohibitions—that is, concealed-carry bans—were "constitutional *only if they did not similarly prohibit open carry*." *Id.* (emphasis added). Those state court decisions occurred relatively close to the Founding, from 1822 to 1858, when many of the Founders who voted to ratify the Second Amendment were still alive. Most of those courts upheld state bans

on concealed carry, but only if the law allowed individuals to carry openly at the same time. *See, e.g.*, *State v. Chandler*, 5 La. Ann. 489, 490 (1850) (concluding that Louisiana's concealed-carry prohibition "interfered with no man's right to carry arms (to use its words) 'in full open view,' which places men upon an equality"); *see also Nunn v. State*, 1 Ga. 243, 251 (1846) (holding that Georgia's concealed-carry prohibition was "valid," "inasmuch as it does not deprive the citizen of his *natural* right of self-defence"; but "so much of it, as contains a prohibition against bearing arms openly, is in conflict with the Constitution, and void").

All of this history demonstrates that a state cannot prohibit both open and concealed carry at the same time, as Florida did for 18-to-20-year-olds in 2024 when Eubanks committed his offense. "States c[an] *not* ban public carry altogether." *Bruen*, 597 U.S. at 53 (emphasis in original). Thus, the State agrees with Eubanks that this Court should reverse the trial court's denial of his motion to dismiss, vacate his concealed-carry conviction, and reverse the portion of his sentence imposed because of his concealed-carry conviction.

CONCLUSION

Based on the foregoing arguments and authorities, the proceedings below should be AFFIRMED.

JAMES UTHMEIER
Attorney General

/s/ Christine K. Pratt
JEFFREY P. DESOUSA (FBN 110951)
Acting Solicitor General
NATHAN A. FORRESTER (FBN 1045107)
Chief Deputy Solicitor General
CHRISTINE K. PRATT (FBN 100351)
Assistant Solicitor General
Office of the Attorney General
The Capitol, PL-01
Tallahassee, FL 32399
(850) 414-3300
christine.pratt@myfloridalegal.com

CELIA TERENZIO (FBN 0656879)
Chief Assistant Attorney General
1515 N. Flagler Dr., Ste. 900
West Palm Beach, FL 33401
(561) 837-5016
CrimAppWPB@MyFloridaLegal.com

Counsel for Appellee

February 6, 2026

CERTIFICATE OF COMPLIANCE

Undersigned certifies that this document complies with the font and word count requirements of Fla. R. App. P. 9.045(e) and 9.210(a)(2).

/s/ Christine K. Pratt
Assistant Solicitor General

CERTIFICATE OF SERVICE

I CERTIFY that on February 6, 2026, I electronically filed the foregoing document with the Clerk of the Court using the Florida courts' e-filing portal, causing it to be served on all counsel of record or *pro se* parties identified in the attached service list. For any counsel or parties not authorized to receive notices of electronic filing, I caused the foregoing document to be served in another authorized manner.

/s/ Christine K. Pratt
Assistant Solicitor General

SERVICE LIST

Ethan R. Goldberg
421 Third Street
West Palm Beach, FL 33401
Egoldberg@pd15.state.fl.us
appeals@pd15.state.fl.us