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No. 130173

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DESHAWN WALLACE, Defendant-Appellant.	) Appeal from the Appellate Court of Illinois, First District, No. 1-20-0917)) There on Appeal from the Circuit Court of Cook County, Criminal Division, No. 19-CR-7197)) The Honorable Ursula Walowski, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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NATURE OF THE CASE

Following a bench trial, defendant was convicted of armed habitual criminal (AHC). The appellate court affirmed defendant's conviction, and this Court granted his petition for leave to appeal. No issue is raised on the pleadings.

ISSUES PRESENTED

The offense of AHC requires proof that a defendant possessed a firearm after having been convicted of two prior qualifying offenses. 720 ILCS 5/24-1.7(a) (AHC Act). The parties agree that defendant possessed a firearm on the night in question and that he has two prior felony convictions in adult court. However, defendant contends that the evidence was insufficient to convict him of AHC because he committed one of those prior felonies — armed robbery — when he was 17, and pursuant to amendments to the Juvenile Court Act enacted years after his conviction for that offense, it is possible that if he were a juvenile and committed armed robbery today, his case might be adjudicated in juvenile court (which adjudication would not constitute a "conviction" necessary to support an AHC charge). This appeal presents the following issues:

1. Whether defendant's sufficiency claim is meritless because, under the plain language of the AHC Act, a conviction of a 17-year-old offender in adult court is a qualifying prior conviction, regardless of amendments to the Juvenile Court Act that were enacted years later.

2. Whether, even if the AHC Act were ambiguous, treating the adult-court conviction of a 17-year-old for a forcible felony as a qualifying prior conviction is most consistent with the legislative purpose of the AHC Act: deterring repeat felony offenders from possessing guns.

3. Whether defendant's sufficiency claim fails for the additional, independent reasons that (1) it is barred, as it relies on new evidence not presented at trial; and (2) that new evidence fails to show that no rationale factfinder could conclude that defendant is guilty of AHC.

4. Whether, if defendant's challenge to his AHC conviction has merit, then the proper remedy is to remand for sentencing on his remaining convictions.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315(a) and 604(a). This Court allowed defendant's petition for leave to appeal on May 29, 2024.

STATUTE INVOLVED

When defendant was charged with AHC, the AHC Act stated:

> (a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:
>
> (1) a forcible felony as defined in Section 2-8 of this Code;
>
> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child as described in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm as described

> in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05; or
>
> (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.
>
> (b) Sentence. Being an armed habitual criminal is a Class X felony.

720 ILCS 5/24-1.7 (2024).[1]

STATEMENT OF FACTS

A. Defendant's Prior Convictions

In 2008, when defendant was 17 years old, he robbed two people at gunpoint; he subsequently was convicted in adult court of armed robbery, a Class X felony, and sentenced to six years in prison. R95.[2] Around the time he committed that armed robbery, defendant became a member of the Breeds street gang, and he remained a member of the gang into his 20s. SC8.

In 2012, not long after he was released from prison, defendant was convicted of two misdemeanors for two separate incidents (narcotics-related loitering and criminal trespass to a vehicle) and sentenced to several weeks in jail. SC6. In 2015, defendant was arrested again and convicted of

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[1] Effective January 1, 2025, the AHC Act was amended to rename the offense "unlawful possession of a firearm by a repeat felony offender," though the statute was not substantively changed. 720 ILCS 5/24-1.7 (eff. 1/1/2025). For consistency with defendant's brief, the People refer to the offense as AHC and the statute as the AHC Act.

[2] Citations to "C_," R_," and "SC_" respectively refer to the common law record, report of proceedings, and secured record. "Def. Br. _" refers to defendant's opening brief in this Court.

unlawful use of a weapon by a felon, a Class 2 felony, and sentenced to four years in prison. R95-96.

B. Defendant's AHC Conviction in this Case

In 2019, not long after defendant was released from prison following his second felony conviction, he was again arrested in possession of a gun (his third gun-related felony) and charged with AHC, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. C14-26.

Before trial, defendant moved to suppress the gun police had recovered, arguing that the officers lacked probable cause to search him. C36-39. At the suppression hearing, Officer Edward Zeman's body worn camera footage was admitted into evidence. R45. Zeman testified that on the night in question, he and his partner were on patrol in a Chicago neighborhood where a gang conflict had resulted in several shootings. R38. They stopped a car because it had no rear brake light. R28. As Zeman approached the front passenger side where defendant was seated, he could smell alcohol and cannabis, and he saw a bag of cannabis next to defendant. R31-33, 39-41. Defendant was behaving in an "unusual" way, including breathing heavily, gulping, and not making eye contact. R40. Zeman saw a "large bulge" in the pocket of defendant's jacket. R33-34. He asked defendant to step out of the car, but defendant did not do so. R41. Zeman was concerned that defendant was concealing a gun, so he reached into the car and performed a protective pat-down over defendant's jacket. R42. When he did, Zeman felt a metal object and recovered a handgun. *Id.* The circuit

court denied the motion to suppress, finding that police were justified in performing a protective pat-down. R48-49.

At defendant's bench trial, the parties stipulated that, if called, Officer Zeman would testify as he had at the suppression hearing. R76. The parties also stipulated to the admission of the body camera footage and records proving defendant had two prior felony convictions (including his 2008 armed robbery conviction). R76-78. The defense then re-called Officer Zeman, who testified that while he smelled alcohol and cannabis coming from inside the car, defendant himself did not smell like either substance. R80-82.

The trial court found defendant guilty of AHC and multiple counts of unlawful use of a weapon by a felon and aggravated unlawful use of a weapon. R84-85; C9, 55. The court then merged the convictions into a single conviction for AHC. R85, 88-89. At sentencing, defendant admitted that he possessed a gun and stated he had wanted to plead guilty, but he was unwilling to accept the number of years in prison the prosecution had offered in their proposed plea agreement; he asked the trial court for leniency. R99-100. The court sentenced defendant to six years in prison. R102.

C. Defendant's Appeal

On appeal, defendant's primary argument was that the trial court had erred in denying his motion to suppress the firearm. *People v. Wallace*, 2023 IL App (1st) 200917, ¶¶ 15-16. The appellate court rejected that argument. *Id.* ¶¶ 18-29.

Defendant also argued — for the first time — that his 2008 conviction for armed robbery could not serve as a predicate offense for AHC because he was 17 years old when he committed it. *Id.* ¶ 32. Defendant did not dispute that armed robbery is a forcible felony and, therefore, usually is sufficient to serve as a predicate offense for AHC. *See id.* However, defendant argued, his 2008 armed robbery conviction was not a qualifying prior conviction because, years after he was convicted of that offense, the Juvenile Court Act was amended to raise the age of potential eligibility for juvenile court from 16 to 17. *Id.* Accordingly, defendant argued that even though his armed robbery conviction was a Class X felony conviction in adult court for which he was sentenced to six years in prison, it should be deemed a juvenile delinquency adjudication in juvenile court (which the parties agree is insufficient to support AHC). *Id.*

Applying the "plain language" of the AHC Act, the appellate court unanimously rejected defendant's interpretation, including defendant's argument that "age operates as an element of" AHC. *Id.* ¶¶ 35-38. The court explained that under the plain language of the AHC Act,

> [A]n armed habitual criminal is a person who knowingly possesses a firearm after already being convicted of two qualifying offenses. . . . Thus, the *elements* of the offense include (1) knowing possession of a firearm and (2) the aforementioned two past qualifying convictions. Age is simply not included . . . In fact, the statute does not contain any reference to age. . . [and] as the State notes, "defendant's age does not change the fact that he was 'convicted,' nor does it change the fact that armed robbery is a forcible felony."

Id. ¶ 38 (emphasis in original). The appellate court further explained,

> [I]t is beyond dispute that defendant committed the predicate offense of armed robbery in 2008 at age 17, and the guilty finding for that offense resulted in a conviction in adult criminal court (not juvenile court). Later, in 2014, the legislature amended the juvenile statute so that an armed robbery offense committed at age 17 would result in only a juvenile adjudication. . . . While defendant would like us to read that amendment into the armed habitual criminal statute, we cannot. The amendment is not retroactive, and defendant's "invitation is one for the legislature, not this court."

Id. ¶ 35 (citations omitted). The appellate court observed that "no rule of construction authorizes this court to declare that the legislature did not mean what the plain language of the statute imports, nor may we rewrite a statute to add provisions or limitations the legislature did not include." *Id.* Accordingly, the appellate court affirmed defendant's conviction. *Id.* ¶ 45.

STANDARDS OF REVIEW

The construction of a statute is a legal question that is reviewed de novo. *People v. Johnson*, 2013 IL 114639, ¶ 9. Courts considering a sufficiency of the evidence claim must determine "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." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (emphasis in original).

ARGUMENT

Contrary to the plain language of the AHC Act and the General Assembly's well-known intent to enact laws that curb gun violence, defendant asks this Court to adopt a complicated (and unworkable) interpretation of the

statute that would exempt some repeat felons from the AHC Act. Specifically, defendant argues that someone is guilty of AHC only if the prosecution proves beyond a reasonable doubt that either (1) he was at least 18 years old at the time of each of his prior felony convictions; or (2) he would be transferred to adult court under the amended Juvenile Court Act if, counterfactually, he were a juvenile now and committed his prior offenses today. Def. Br. 12-18. Defendant's argument fails because the plain language of the AHC Act imposes no age requirement, let alone the complicated counterfactual jurisdictional element defendant asks this Court to adopt.

Defendant's interpretation contradicts not only the plain language of the Act, but the legislative purpose behind it. When discussing the AHC Act, courts have recognized that "[t]he people of Illinois, through their elected representatives, have come to the conclusion that more severe firearm possession laws are an effective means to stem gun violence when applied to individuals with past felony convictions." *People v. Ashford*, 2022 IL App (1st) 191923-U, ¶ 37.[3] And it is undisputed that the General Assembly enacted the AHC Act "to help protect the public from the threat of violence that arises when repeat offenders possess firearms." *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 27; *see also, e.g., People v. Brooks*, 2023 IL App (1st) 200435, ¶ 103 (similar).

[3] The nonprecedential Rule 23 orders cited in this brief are available on the Illinois courts' website, at https://www.illinoiscourts.gov/top-level-opinions/.

Therefore, it is unsurprising that the appellate court has repeatedly rejected defendant's interpretation, including in the decision below. This Court should enforce the plain language of the Act and the General Assembly's clear intent by affirming defendant's AHC conviction.

I. Defendant's Sufficiency of the Evidence Claim Is Meritless Because It Is Contrary to the Plain Language of the AHC Act.

Defendant's sufficiency claim — which turns on his assertion that his armed robbery conviction is not a qualifying prior conviction — fails as a matter of law because it is contrary to the plain language of the AHC Act. *See People v. Carlson*, 2016 IL 120544, ¶ 17 (when interpreting a statute, courts "must give the language its plain and ordinary meaning").

A. Under the Plain Language of the AHC Act, Defendant's Class X Felony Conviction for Armed Robbery Is a Qualifying Prior Conviction.

The AHC Act states that a person is guilty of AHC if they possess a gun "after having been convicted" at least twice for any of the offenses listed in subparagraphs 1-3. 720 ILCS 5/24-1.7(a). Based on the plain language of the Act, the parties agree there are two requirements for a past offense to qualify as a predicate offense for a charge of AHC: (1) the past offense must have resulted in a "conviction"; and (2) the offense for which the defendant was convicted must be one of the offenses listed in subparagraphs 1-3. Def. Br. 12. Defendant's 2008 Class X armed robbery conviction meets both of those requirements.

1. Defendant's armed robbery conviction meets the first requirement to be a qualifying prior conviction.

The appellate court was correct when it held that defendant's armed robbery conviction meets the first requirement to be a qualifying prior conviction because "it is beyond dispute" that defendant was found guilty "in adult criminal court (not juvenile court)." *Wallace*, 2023 IL App (1st) 200917, ¶ 35. As the appellate court recognized, this first requirement is backward looking and asks whether the defendant was previously "convicted." *Id.* ¶ 33. "Conviction" is defined by the Criminal Code to include a judgment entered on "a plea of guilty or upon a verdict or finding of guilty" in adult court. 720 ILCS 5/2-5.

To be sure, this Court has held that a delinquency adjudication in juvenile court is not a "conviction." *People v. Taylor*, 221 Ill. 2d 157, 176-78 (2006). However, it is settled that "the plain meaning" of the word "conviction" includes "the conviction of [a defendant] while a juvenile in adult court." *Fitzsimmons v. Norgle*, 104 Ill. 2d 369, 372-73 (1984) (statute prohibiting probation for defendants with certain prior convictions includes prior conviction in adult court when the defendant was a juvenile). Accordingly, that defendant was 17 at the time of that offense does not change the fact that he was "convicted." *See, e.g., Fitzsimmons*, 104 Ill. 2d at 372-73; *see also People v. Brown*, 2024 IL App (1st) 220827-U, ¶ 26 (definition of prior "conviction" under the AHC Act includes guilty verdict in adult court when defendant was 16).

Defendant's argument that the appellate court mischaracterized the phrase "after having been convicted" in the AHC Act as a perfect passive participle because defendant believes it is in the present perfect tense, Def. Br. 12-13, draws a distinction without a difference. As defendant's own authority makes clear, even if he is correct that the phrase is in the present perfect tense, the result remains the same: the first requirement asks whether the defendant has a prior conviction *E.g., Hayashi v. Illinois Dep't of Fin. & Pro. Regul.*, 2014 IL 116023, ¶¶ 17-18 (the phrase "has been convicted" in health care registration statute was in the present perfect tense and applied to individuals with a prior conviction) (cited at Def. Br. 13); *see also People v. Hawthorne*, 2024 IL App (1st) 220127, ¶ 30 (the phrase "having been convicted" in the AHC Act is "written in the present perfect tense" and thus "describes defendant's [prior conviction in 2012 when he was 17] precisely" because he was convicted in adult court).

Indeed, defendant does not actually dispute that his armed robbery conviction meets the first requirement to be a qualifying prior conviction. *See* Def. Br. 13-14. Instead, he dismisses the first requirement as "irrelevant" to his claim in this appeal, which he says is based on the second requirement, *i.e.*, whether his past offense is one of the offenses listed in subparagraphs 1-3 of the statute. *Id*. at 13. Therefore, this Court should find that the appellate court correctly held that defendant's armed robbery conviction meets the first requirement to be a qualifying prior conviction under the AHC Act.

2. Defendant's armed robbery conviction also meets the second requirement to be a qualifying prior conviction.

In addition, defendant's armed robbery conviction meets the second requirement to be a qualifying prior conviction. Subparagraphs 1-3 of the Act provide that the following offenses are qualifying prior offenses:

(1) "a forcible felony as defined" in 720 ILCS 5/2-8; or

(2) certain enumerated offenses, including unlawful use of a weapon by a felon and home invasion; or

(3) any violation of the Controlled Substances Act or the Cannabis Control Act "that is punishable as a Class 3 felony or higher."

720 ILCS 5/24-1.7. As the appellate court correctly held, defendant's armed robbery conviction fits within the plain language of subparagraph 1 because armed robbery is a forcible felony "as defined" in 720 ILCS 5/2-8. *Wallace*, 2023 IL App (1st) 200917, ¶ 34; *see also* 720 ILCS 5/2-8 (definition of "forcible felony" includes robberies).

Further, as the appellate court also correctly observed, it is irrelevant that defendant was 17 at the time he committed armed robbery because subparagraph 1 of the AHC Act, the definition of "forcible felony," and the offense of "armed robbery" do not impose age requirements. *Wallace*, 2023 IL App (1st) 200917, ¶¶ 35-38; *see also* 720 ILCS 5/24-1.7(a)(1) (AHC Act); 720 ILCS 5/2-8 (forcible felonies); 720 ILCS 5/18-2 (armed robbery). By its plain terms, the second requirement of a qualifying prior conviction under the AHC Act focuses not on the defendant or the defendant's personal characteristics, but on a statutory

analysis of the prior offense. 720 ILCS 5/24-1.7(a). Indeed, defendant himself says that the second requirement focuses on the "classification of [the] prior offenses." Def. Br. 19. Accordingly, defendant's age when he committed a qualifying offense is irrelevant under the plain language of the Act.

Notably, several other appellate decisions have reached the same conclusion and held that a prior armed robbery conviction (or other forcible felony conviction) in adult court is a qualifying prior conviction even if the defendant committed that offense when he or she was under the age of 18. *See, e.g.*, *Brown*, 2024 IL App (1st) 220827-U, ¶¶ 27-30 (prior armed robbery conviction in adult court when defendant was 16 was a qualifying prior conviction under the AHC Act); *People v. Hawkins*, 2024 IL App (1st) 220991-U, ¶¶ 17-20 (same where defendant was convicted of robbery in adult court when he was 17); *People v. Herrion*, 2024 IL App (1st) 221951-U, ¶¶ 15-20 (same where defendant was convicted of burglary in adult court at age 17); *People v. Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-36 (same).

As the appellate court has repeatedly held, under the plain language of the AHC Act, "all that matters is that the defendant has a prior conviction for one of the specified offenses." *Herrion*, 2024 IL App (1st) 221951-U, ¶ 20 (collecting cases); *see also, e.g.*, *Hawkins*, 2024 IL App (1st) 220991-U, ¶ 18 (similar); *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-36 (similar). And because defendant cannot dispute that armed robbery is a forcible felony, his

armed robbery conviction is a prior qualifying conviction under the plain language of the AHC Act.

In sum, therefore, the appellate court correctly held that defendant's sufficiency of the evidence claim is meritless because his armed robbery conviction is a prior qualifying conviction under the plain language of the AHC Act. *Wallace*, 2023 IL App (1st) 200917, ¶¶ 31-35.

B. Defendant's Interpretation Has Been "Repeatedly Rejected" by the Appellate Court Because It Violates Fundamental Rules of Statutory Construction.

Contrary to the plain language of the Act, defendant now asks this Court to interpret the AHC Act to impose additional elements related to a defendant's predicate offenses: he argues that under the AHC Act the prosecution must prove beyond a reasonable doubt that (1) the defendant was at least 18 years old at the time of each of his prior felony convictions; or (2) the defendant would be transferred to adult court under the amended Juvenile Court Act if, counterfactually, he were a juvenile now and committed his prior offenses today. Def. Br. 14-19. To reach the conclusion that the AHC Act imposes such elements, defendant first focuses on an entirely different statute, the Juvenile Court Act, and observes that in 2014 (six years after his armed robbery conviction) that statute was amended to raise the age of defendants who are *potentially* eligible for juvenile court from 16 to 17. *Id*. at 11, 24 (citing 705 ILCS 405/5-120). Defendant then notes that some parts of subparagraphs 1-3 of the AHC Act (though not all) are written in the present tense, such as subparagraph 1 which states that

qualifying convictions include forcible felonies "as defined" in the Criminal Code. *Id*. at 14 (citing 720 ILCS 5/24-1.7(a)(1)). Defendant then states, in conclusory fashion, that the use of the present tense requires prosecutors to prove beyond a reasonable doubt that (1) he was at least 18 at the time of his prior armed robbery conviction; or (2) hypothetically, he would merit transfer to adult court under the amended Juvenile Court Act if he were still a juvenile and committed that past offense today. *Id*. at 14, 23.

Notably, the appellate court has "repeatedly rejected" defendant's argument that the use of the present tense in some parts of the AHC statute requires one to look to the present state of the Juvenile Court Act. *Brown*, 2024 IL App (1st) 220827-U, ¶ 27 (collecting cases rejecting defendant's interpretation); *see also, e.g.*, *Hawkins*, 2024 IL App (1st) 220991-U, ¶¶ 17-20; *Herrion*, 2024 IL App (1st) 221951-U, ¶ 20; *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-37. And the appellate court has rejected that argument for good reason. As noted, it is settled that the "most reliable indicator of legislative intent is the statutory language itself," so courts "must give the language its plain and ordinary meaning." *Carlson*, 2016 IL 120544, ¶ 17; *see also People v. Grant*, 2022 IL 126824, ¶ 24 (same). In turn, it is a basic principle of statutory construction that a court "may not" add new language to a statute or "add exceptions, limitations, or conditions, or otherwise change the law so as to depart from the plain meaning of language employed in the statute." *Grant*, 2022 IL 126824, ¶ 25; *see also Carlson*, 2016 IL 120544, ¶ 17

(courts "should not read into" a statute "exceptions, conditions, or limitations not expressed by the legislature").

As the appellate court has repeatedly held, defendant's interpretation does exactly that because "[t]o exclude an otherwise qualifying prior conviction based on the defendant's age at the time of commission reads an exception, limitation, and condition into the AHC statute that the legislature did not express." *Hawkins*, 2024 IL App (1st) 220991-U, ¶ 21; *see also Brown*, 2024 IL App (1st) 220827-U, ¶ 26 (rejecting defendant's interpretation because it reads into the AHC Act "'exceptions, limitations, or conditions the legislature did not express'"); *Herrion*, 2024 IL App (1st) 221951-U, ¶ 20 (rejecting defendant's interpretation because it "asks us to read language into the armed-habitual-criminal statute that is not there"); *Irrelevant*, 2021 IL App (4th) 200626, ¶ 37 (similar). Simply put, defendant's argument that the AHC Act imposes age and jurisdictional requirements (*i.e.*, that the prosecution must prove that, hypothetically, a defendant's past offense would be adjudicated in adult court if committed today) is contrary to the plain language of the statute, which imposes no such requirements.

Nor, contrary to defendant's argument, Def. Br. 14-15, can the statute's use of the present tense in parts of subparagraphs 1-3 reasonably be read to demonstrate that the legislature intended to add additional elements to the crime of AHC. It would be strange indeed if, after clearly and expressly laying out the other elements of the offense, the General Assembly

intended to create a complicated, multifaceted jurisdictional element — that the defendant was at least 18 at the time of the offense or that, hypothetically, if he were a juvenile today and committed his past offense today, he would merit transfer to adult court under the amended Juvenile Court Act — simply by choosing the present tense.

Indeed, when the legislature wishes to enact a law that exempts minors convicted in adult court, or otherwise imposes age requirements, it knows how to do so, and it does so expressly in simple, clear, and direct language. *E.g.*, *People v. Christopherson*, 231 Ill. 2d 449, 456-57 (2008) (declining to read an exception for juveniles into criminal statute and observing that the legislature knows how to impose age requirements when it wishes to do so); *Hawkins*, 2024 IL App (1st) 220991-U, ¶ 22 (observing that "the legislature knows how to express whether the defendant's age at the time of a prior conviction affects the status of that conviction in future criminal proceedings" but "no similar language appears in the AHC statute").

For example, a provision in the Sex Offender Registration Act expressly states that it "does not apply to minors prosecuted under the criminal laws as adults." 730 ILCS 150/3-5(i). The Class X recidivist sentencing statute applies only if the defendant's two prior Class X offenses were "committed when the person was 21 years of age or older." 730 ILCS 5/5-4.5-95(a)(4)(E). The aggravated battery of a person with an intellectual disability statute requires prosecutors to prove that the defendant was "at

least 18 years of age." 720 ILCS 5/12-3.05(b). And aggravated criminal sexual abuse requires prosecutors to prove that the defendant was "at least 5 years older than the victim." 720 ILCS 5/11-1.60(d).

Plainly, there is no such limiting language in the AHC Act. 720 ILCS 5/24-1.7(a). Instead, the appellate court has repeatedly recognized that the use of the present tense in the phrase "a forcible felony as defined in Section 2-8 of this Code" of subparagraph 1 requires a Court to consider whether the prior offense is one of the class of offenses that is statutorily defined as a forcible felony under the current version of the Criminal Code, *i.e.*, the Criminal Code in existence at the time the defendant is alleged to have committed AHC. *Hawkins*, 2024 IL App (1st) 220991-U, ¶ 21; *Brown*, 2024 IL App (1st) 220827-U, ¶ 29; *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-36.

Thus, in cases like this, where the defendant's prior offense is armed robbery, that conviction is a qualifying prior conviction because the definition of forcible felony included armed robbery in 2019 when defendant committed AHC. 720 ILCS 5/2-8 (2019) (defining forcible felonies); *see, e.g.*, *Brown*, 2024 IL App (1st) 220827-U, ¶ 29 (the offense of armed robbery "has remained a forcible felony at all relevant times"); *see also, e.g.*, *Irrelevant*, 2021 IL App (4th) 200626, ¶ 36 ("[A]ll that matters is that defendant had a conviction, and that conviction was for an offense described in subsection (a)(1) at the time defendant committed the underlying conduct which resulted in the armed habitual criminal charge"); *Herrion*, 2024 IL App (1st) 221951-U, ¶ 20

(similar). And, again, that defendant was 17 when he committed armed robbery is irrelevant because, "as defined" under the Criminal Code, neither "forcible felony" nor "armed robbery" includes an age requirement. 720 ILCS 5/2-8; 720 ILCS 5/18-2.

The plain text of the AHC Act also belies defendant's argument that courts must consider the effect of amendments to the Juvenile Court Act when evaluating whether a past conviction is a qualifying prior conviction. As noted, subparagraph 1 of the AHC Act states in its entirety that a prior qualifying offense includes "a forcible felony as defined in Section 2-8 of this Code." 720 ILCS 5/24-1.7(a). And defendant acknowledges that "Section 2-8 of this Code" indisputably refers to *the Criminal Code*. *E.g.*, Def. Br. 17 (stating that subparagraph 1 requires that past offenses be "evaluated as they are defined and described in the Illinois Criminal Code"). That concession is fatal to defendant's argument that courts must consider the effect of amendments to the Juvenile Court Act when evaluating past convictions because the Juvenile Court Act is *not* in the Criminal Code, let alone part of "Section 2-8" of the Code. *Compare* 705 ILCS 405/1-1 *et seq*. (Juvenile Court Act) with 720 ILCS 5/1-1 *et seq*. (Illinois Criminal Code). Accordingly, by its plain terms the AHC Act does not direct the Court's interpretation to the Juvenile Court Act at all. 720 ILCS 5/24-1.7. As the appellate court put it in a similar case,

> The "Code" referred to in subsection (a)(1) of the AHC statute is the Criminal Code. . . . Robbery is a forcible felony under that Code. 720 ILCS 5/2-8 (West 2020). Thus, the robbery [defendant] committed in 2013 remains an adult criminal conviction, not a juvenile adjudication.

Hawkins, 2024 IL App (1st) 220991-U, ¶ 20. Therefore, contrary to defendant's argument, *see* Def. Br. 16-17, there is no inconsistency in the People's argument (or in the appellate opinions consistent with the People's interpretation): the plain language of subparagraph 1 of the AHC Act requires a court to look at the current version of *the Criminal Code* and ask whether, under the Code, armed robbery remains a forcible felony. The answer to that question is unambiguously, yes, 720 ILCS 5/2-8 (forcible felonies) & 5/18-2 (armed robbery), so defendant's 2008 armed robbery conviction remains a qualifying predicate offense.

Tellingly, against the weight of authority rejecting his interpretation, defendant relies on only one case addressing subparagraph 1 of the AHC Act: *People v. Dawson*, 2022 IL App (1st) 190422. *See* Def. Br. 14-17. First, as defendant concedes, *id*. at 15, *Dawson* has been vacated, which means the opinion has no legal effect and, as a matter of law, cannot be relied upon, *see, e.g., People v. Simmons*, 2016 IL App (1st) 131300, ¶ 116 (parties may not rely on vacated decisions for persuasive authority). Second, *Dawson* was wrongly decided for the same reason that defendant's arguments before this Court are unavailing: *Dawson*'s conclusion that courts must consider the amendments to the Juvenile Court Act when determining whether a past conviction in adult court is a prior qualifying conviction is contrary to the

plain language of the AHC Act. It is therefore unsurprising that *Dawson* has been rejected multiple times by other appellate opinions. *E.g.*, *Brown*, 2024 IL App (1st) 220827-U, ¶ 29; *Herrion*, 2024 IL App (1st) 221951-U, ¶¶ 17-20.

In sum, defendant's interpretation is contrary to the plain language of the AHC Act. The correct interpretation is the interpretation repeatedly recognized by the appellate court: under the plain language of the AHC Act, a prior conviction for a forcible felony is a qualifying conviction without consideration of the defendant's age when he committed that offense or what court could hypothetically have jurisdiction if the defendant were a juvenile and committed his past offense today.

C. In Addition, Defendant's Interpretation Is Unworkable and Will Lead to Absurd and Unjust Results.

Defendant's interpretation of the AHC Act is also contrary to the settled rules that (1) courts should read a statute as a whole and consider "the consequences of construing the law one way or another"; and (2) the legislature does not intend to create unworkable laws, or laws that lead to "unjust" or absurd results. *E.g., People v. Gutman*, 2011 IL 110338, ¶ 12.

First, looking at the statute as a whole, defendant is wrong that "all three" subparagraphs of the AHC Act "are in the present tense." *See* Def. Br. 12. Subparagraph 2, which defendant contends is written in the present tense because it contains the phrase "as described," actually states that prior qualifying convictions include

> (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon; aggravated discharge of a firearm; vehicular hijacking; aggravated vehicular hijacking; aggravated battery of a child *as described* in Section 12-4.3 or subdivision (b)(1) of Section 12-3.05; intimidation; aggravated intimidation; gunrunning; home invasion; or aggravated battery with a firearm *as described* in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05;

720 ILCS 5/24-1.7(a)(2) (emphasis added). Thus, contrary to defendant's contention, the "as described" language applies to only two offenses: aggravated battery of a child and aggravated battery with a firearm. *Id.* Importantly, however, neither the phrase "as described" nor other present tense verbs are used when listing the other offenses in subparagraph 2, such as the offense of intimidation. *Id.* Thus, contrary to demonstrating that courts must *always* consider whether a defendant hypothetically would be tried in adult court if he committed his prior offense today, the language of the statute viewed as a whole, shows that defendant's interpretation leads to absurd and unjust results.

For example, under defendant's interpretation, if an offender had a prior conviction at age 17 for a violent and dangerous Class X forcible felony — such as armed robbery or aggravated arson — then that conviction would *not* automatically be a qualifying prior conviction under the AHC Act; instead, the People would have to prove that the offender would be transferred to adult court under the amended Juvenile Court Act if, counterfactually, the offender were a juvenile now and committed that past offense today. Def. Br. 12. That is because, defendant argues, armed robbery

and aggravated arson are forcible felonies, and subparagraph 1 of the Act uses the present tense in the phrase "a forcible felony as defined in [the Criminal Code]." *Id*.

But, under defendant's interpretation, if an offender had a prior conviction at age 17 for the comparatively less violent and less dangerous Class 3 felony of intimidation — or some of the other lesser felonies listed in subparagraph 2 — then that conviction *automatically* would be a prior qualifying conviction under the AHC Act because the General Assembly did *not* use a present tense verb with "intimidation" or certain other lesser crimes when it listed those offenses in subparagraph 2 of the AHC Act.

It is both absurd and unjust to conclude that less serious and less violent felonies would automatically be prior qualifying offenses under the AHC Act, but very violent and dangerous Class X felonies such as armed robbery and aggravated arson would not. And because defendant's interpretation creates such absurd and unjust results, it must be rejected for this additional reason.

Second, defendant's interpretation is unworkable. Under the amended version of the Juvenile Court Act, a small number of offenses committed by 17-year-old (or younger) offenders *must* be tried in adult court, such as first degree murder. *See* 705 ILCS 405/5-130(1)(a). However, for most offenses, prosecutors must petition to transfer juvenile offenders to adult court, such as through a motion for discretionary transfer. *See* 705 ILCS 405/5-805(3).

In determining whether to exercise their discretionary authority to transfer a case to adult court, juvenile courts must consider numerous factors, as of the time the transfer petition is filed, that relate to issues such as (1) the facts of the underlying offense; (2) the offender's personal characteristics; and (3) the services available in the juvenile system as compared to the adult system. *Id.*

For example, the juvenile court must consider, among other personal characteristics, the offender's mental and physical health, his "willingness to participate meaningfully in available services," and the "reasonable likelihood that the minor can be rehabilitated" in the juvenile system. *Id.* And the juvenile court must consider the "advantages of treatment within the juvenile system," including "whether there are facilities or programs, or both, particularly available in the juvenile system" that would benefit the offender, and the overall "adequacy" of services that are available. *Id.* It is plainly unworkable to ask the People to prove, and trier of fact to determine, whether a case would have been transferred years earlier based on a retroactive analysis of these factors as they existed at the time a petition would have been filed.

This case illustrates the point. Here, as in most every case to which the appellate court's interpretation of the AHC Act would apply, there was no need to gather or present evidence during defendant's 2008 Class X armed robbery case regarding whether he should be transferred to adult court because under the law that existed at that time, he was too old to be

adjudicated in juvenile court. Therefore, evidence of the factors that determine whether a case should be transferred to adult court was not collected and presented then, and could be very difficult or perhaps impossible to recreate now.

In addition, even if such evidence were available, defendant's interpretation is still unworkable. For example, what does it mean to prove beyond a reasonable doubt — as defendant argues the prosecution is required to do — that an offender would be transferred to adult court for his past offense if, counterfactually, he were a juvenile now and committed that past offense today? Would prosecutors need to call the assistant state's attorney who prosecuted the prior offense to testify that they would file a transfer petition? Would the prosecution be required to call a juvenile court judge, or an expert on juvenile court law, to testify that such a petition would be granted?

Moreover, defendant's interpretation would require the jury, which is generally composed of laypersons with no legal training, to analyze and apply the provisions of the Juvenile Court Act (which contain complicated rules with numerous factors and subparagraphs) and make a legal judgment of whether the defendant would have been transferred to adult court. Indeed, defendant's interpretation would require AHC trials to include mini-trials about the *prior* offense (including the "circumstances" of that offense, and whether it was committed in an "aggressive" manner), the defendant's

characteristics at that time (such as whether he was amenable to rehabilitation), and the services available in the juvenile system.

It cannot credibly be argued that this is what the General Assembly intended when it stated in subparagraph 1 of the AHC Act that qualifying convictions include "a forcible felony as defined" in 720 ILCS 5/2-8 of the Criminal Code. Instead, the correct interpretation of the AHC Act is that it means exactly what it says: a prior conviction for a forcible felony is a qualifying conviction without consideration of the offender's age or the hypothetical jurisdiction of the juvenile court if he were a juvenile now and committed his past offense today.

D. Defendant's Interpretation Also Ignores the Plain Language of the Juvenile Court Act.

As the appellate court has repeatedly recognized, defendant's argument that his 2008 armed robbery conviction should now be deemed a juvenile delinquency adjudication (and, thus, not a qualifying conviction for his 2019 AHC offense) fails for an additional, independent reason: it ignores that the Juvenile Court Act expressly provides that the 2014 amendment expanding the potential jurisdiction of juvenile courts to 17-year-olds is not retroactive. 705 ILCS 405/5-120 (amendment applies only to offenses committed on or after January 1, 2014); *see also People v. Richardson*, 2015 IL 118255, ¶ 10 (legislature had rational bases for not making the amendment retroactive).

Simply put, defendant's argument that his 2008 Class X armed robbery conviction in adult court now should be deemed a juvenile delinquency adjudication in juvenile court requires this Court to either (1) pretend that defendant committed his armed robbery offense in 2019 (though he really committed it in 2008) and that he was a juvenile in 2019 (though he was really 27 years old); or (2) otherwise deem his 2008 armed robbery conviction in adult court a juvenile delinquency adjudication in juvenile court (even though the amendment to the Juvenile Court Act does not apply retroactively). The appellate court has correctly — and repeatedly — held that those options are untenable. As the court put it in a similar case,

> [T]he robbery [defendant] committed in 2013 remains an adult criminal conviction, not a juvenile adjudication. [Defendant] attempts to avoid this reality by having us consider a hypothetical and counterfactual robbery, as though it were committed in 2020 instead of 2013. But [defendant's] robbery conviction is not hypothetical. He committed it in 2013, not 2020. And he was 24 in 2020, not a juvenile. [Defendant's] argument attempts to apply the Amendment [to the Juvenile Court Act] retroactively in spite of the legislature's clearly expressed intent that the amendment applies only prospectively.

Hawkins, 2024 IL App (1st) 220991-U, ¶ 20; *see also Herrion*, 2024 IL App (1st) 221951-U, ¶ 20 (rejecting defendant's interpretation of AHC Act because it would "effectively give" the amendments to the Juvenile Court Act "retroactive effect"); *Brown*, 2024 IL App (1st) 220827-U, ¶ 30 (similar). Therefore, for this additional reason, defendant's interpretation is incorrect.

* * *

In sum, under the plain language of the AHC Act, defendant's 2008 armed robbery conviction is a prior qualifying conviction, and the prosecution was not required to prove that he would be tried in adult court if, counterfactually, he were a juvenile and committed that offense in 2019. Accordingly, his sufficiency of the evidence claim is meritless.

II. The AHC Act Is Not Ambiguous, But If It Were, Defendant's Interpretation Is Still Incorrect.

Defendant argues in the alternative that this Court could find the AHC Act is ambiguous and, if so, the Court should construe that ambiguity in his favor and hold that prosecutors must prove that he would be tried in adult court for his armed robbery offense if, counterfactually, he were a juvenile now and committed that offense today. Def. Br. 21. Defendant's alternative "ambiguity" argument fails for several independent reasons.

A. The AHC Act is Not Ambiguous.

To begin, the AHC Act is not ambiguous because, as discussed, its plain language makes clear that a prior conviction for a forcible felony is a qualifying conviction regardless of the offender's age or whether the juvenile court hypothetically would have jurisdiction if he were tried today. *Supra* Section I. Indeed, the appellate court has consistently found that the AHC Act is unambiguous and interpreted it according to its plain language. *E.g.*, *Brown*, 2024 IL App (1st) 220827-U, ¶¶ 26-30; *Hawkins*, 2024 IL App (1st) 220991-U, ¶¶ 17-21; *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-36.

Notably, defendant merely contends that the AHC Act is "arguably" ambiguous and identifies no actual ambiguity in the statutory language. Def. Br. 20-22. Defendant's observation that the vacated *Dawson* decision interprets the AHC Act differently than most other appellate decisions does not render the Act ambiguous, *see, e.g.*, *People v. Torres*, 2024 IL 129289, ¶ 42, n.1 (statute was not ambiguous even though appellate decisions had differed in their interpretation), nor does defendant's observation that this Court has found that other statutes (that used different language) were ambiguous. Tellingly, defendant cites no case holding that the AHC Act is ambiguous; to the contrary, his authority treats the statute as unambiguous. *See Dawson*, 2022 IL App (1st) 190422, ¶¶ 21, 41-48 (cited at Def. Br. 15-17). Accordingly, this Court should find that the AHC Act is unambiguous, and its analysis should end with the statute's plain language.

B. If the AHC Act Is Ambiguous, Defendant's Interpretation is Still Incorrect.

Moreover, even if the AHC Act were ambiguous, this Court should reject defendant's argument that prosecutors must prove that he would be tried in adult court for his 2008 armed robbery offense if, counterfactually, he were a juvenile now and committed that offense today. To begin, as discussed, defendant's interpretation leads to absurd results and is unworkable. *Supra* Section I.C. In addition, as discussed, defendant's interpretation requires the amendments to the Juvenile Court Act to be given

retroactive effect, even though the General Assembly expressly provided that the amendments are not retroactive. *Supra* Section I.D.

And, perhaps most importantly, defendant's interpretation is contrary to the purpose of the AHC Act: to curb gun violence. As noted, it is undisputed that the General Assembly has "come to the conclusion that more severe firearm possession laws are an effective means to stem gun violence when applied to individuals with past felony convictions." *Ashford*, 2022 IL App (1st) 191923-U, ¶ 37. And it is likewise undisputed that the General Assembly intended the AHC Act "to protect the public from the threat of violence that arises when repeat offenders possess firearms." *Johnson*, 2015 IL App (1st) 133663, ¶ 27; *see also Brooks*, 2023 IL App (1st) 200435, ¶ 103 (same).

Treating felony convictions of 17-year-olds in adult court as qualifying prior convictions under the AHC Act — as the appellate court repeatedly has — fulfills the legislature's intent to adopt measures that protect the public against the threat posed by repeat felons who possess guns. Simply put, defendant's arguments are anathema to the General Assembly's well-known views regarding guns and gun violence.

The legislative history of the AHC Act underscores this point. In 2020, the General Assembly enacted omnibus amendments to the Criminal Code, some of which imposed age requirements on certain provisions in the Code. *E.g.*, 730 ILCS 5/5-4.5-95(b)(4) (eff. 2021) (amending Class X habitual

offender sentencing provision to require that the defendant be at least 21 at the time of his first offense). Tellingly, however, the General Assembly did not then or thereafter amend the AHC Act to impose age requirements, which is strong evidence that the General Assembly does not intend for age to be an element of AHC. *See* 720 ILCS 5/24-1.7. That is especially so given that the General Assembly has not amended the AHC Act despite the appellate court "repeatedly" holding that convictions of juveniles in adult court may serve as predicate offenses for the offense of AHC. *Supra* Section I (collecting cases); *see also People v. Sroga*, 2022 IL 126978, ¶ 41 (where the General Assembly does not amend a statute to contradict judicial interpretations, it is presumed that the legislature has acquiesced to the courts' interpretation).

Therefore, even if the AHC Act were ambiguous, this Court should reject defendant's interpretation.

C. *Stewart* and Defendant's Remaining Arguments Fail to Support His Interpretation of the AHC Act.

Defendant's reliance on *People v. Stewart*, 2022 IL 126116, is similarly misplaced. *See* Def. Br. 19-21. Indeed, *Stewart* is further evidence that defendant's interpretation of the AHC Act is incorrect.

Stewart addressed a different statute with different language: it addressed a prior version of the Class X recidivist sentencing provision, which provided that a defendant convicted of a Class 2 or higher felony is subject to Class X sentencing if he has certain prior convictions. 2022 IL 126116, ¶¶ 5, 11-14 (citing 730 ILCS 5/5-4.5-95(b) (2017)). Stewart argued

that one of his prior convictions did not qualify because he committed it when he was 17. *Id.* ¶ 11. This Court held that the prior version of the Class X sentencing provision (which was applicable to Stewart's case) was ambiguous about whether a conviction of a 17-year-old could serve as a predicate offense. *Id.* ¶ 18. The Court, however, noted that the Class X sentencing provision had since been amended to expressly provide that prior convictions were qualifying convictions only if they occurred after the defendant turned 21. *Id.* ¶¶ 18-20. The Court found that the amendment clarified that it was the legislature's intent that convictions of juveniles were not qualifying convictions under the Class X sentencing provision. *Id.* ¶¶ 20-22.

In contrast to the statute at issue in *Stewart*, the General Assembly has not amended the AHC Act to impose an age requirement, let alone the counterfactual jurisdictional element defendant asks this Court to read into the statute. *Supra* pp. 30-31. And if, as *Stewart* held, the amendment of the Class X sentencing provision clarified that the legislature intended that juvenile convictions were not qualifying prior convictions under that sentencing provision, then — logically — the lack of a similar amendment to the AHC Act is further evidence that the General Assembly does *not* intend to exclude prior adult-court convictions of juvenile offenders for the offense of AHC. Indeed, even defendant concedes that "the lack of an amendment to the AHC statute might indicate that the legislature did intend for the statute to encompass convictions of juveniles in adult court." Def. Br. 22.

It is unsurprising that the General Assembly did not amend the AHC Act to impose the age and counterfactual jurisdictional requirements that defendant asks this Court to read into the statute, despite amending the sentencing provision at issue in *Stewart* (a provision that is unrelated to gun violence). Namely, the General Assembly is deeply concerned with gun violence, especially the threat of gun violence posed by repeat felons, and the new elements defendant asks this Court to impose would exempt some repeat felons from the AHC Act's reach. *Supra* p. 30.

Given the fundamental differences between the statute at issue in *Stewart* (including its legislative history) and the AHC Act, it is also unsurprising that, even post-*Stewart*, the appellate court has repeatedly rejected defendant's interpretation of the AHC Act. *See, e.g.*, *Wallace*, 2023 IL App (1st) 200917, ¶¶ 39-41 (expressly rejecting the argument that *Stewart* supported defendant's interpretation of the AHC Act); *see also, e.g.*, *Brown*, 2024 IL App (1st) 220827-U, ¶ 27 (post-*Stewart*, rejecting the interpretation of AHC Act defendant proposes here); *Hawkins*, 2024 IL App (1st) 220991-U, ¶¶ 17-22 (same); *Herrion*, 2024 IL App (1st) 221951-U, ¶¶ 15-20 (same). As the appellate court explained below,

> We also find defendant's reliance on *Stewart* misplaced. *Stewart*, while addressing a similar issue involving predicate offenses committed by juveniles, dealt with an entirely different statute, that involved Class X sentencing. . . . Although the Class X sentencing statute similarly required at least two predicate offenses before it could be utilized, that statute addresses a sentencing enhancement and not substantive offenses.

> The Class X sentencing enhancement "simply prescribe[s] the circumstances under which a defendant found guilty of a specific crime may be more severely punished because that defendant has a history of prior convictions," but the convictions are not elements of the most recent felony offense. The State has no burden to prove these convictions beyond a reasonable doubt. . . .
>
> Moreover, in *Stewart*, the supreme court found the Class X sentencing statutory language ambiguous and the matter resolved by subsequent legislation, which added a subsection elucidating that the first qualifying offense for Class X sentencing must have been committed when the person was 21 years of age or older. . . .
>
> As set forth, we do not find the [AHC Act] ambiguous, and even if we did, there is no subsequent legislation resolving the matter in defendant's favor.

Wallace, 2023 IL App (1st) 200917, ¶¶ 39-41 (citations omitted). In sum, rather than supporting defendant's interpretation of the AHC Act, *Stewart* directly undermines it.

Defendant's remaining arguments that this Court should interpret any ambiguity in his favor are likewise unavailing. To begin, defendant's discussion of "juvenile brains" and changing attitudes toward juvenile offenders is irrelevant. Def. Br. 17, 19, 22. Defendant was not a juvenile when he chose to illegally possess a firearm as a 27-year-old man, nor is he being punished for his past armed robbery offense when he was 17. Rather, defendant is being punished because well into adulthood he chose to possess a gun illegally. Indeed, defendant himself emphasizes that the purpose of the AHC Act is "to punish an offender, not for his *past* crimes, but for his *current* offense, and according to his *current* level of dangerousness." *Id.* at 18

(emphasis in original, collecting cases). Furthermore, the law is clear that juveniles can be sentenced to decades in prison for their offenses. *See, e.g.*, *People v. Lusby*, 2020 IL 124046, ¶ 52 (juvenile offender's challenge to de facto life sentence was meritless). Given that such lengthy juvenile sentences are accepted by the legislature, it is untenable for defendant to argue that prior convictions in adult court at 17 were not intended to serve as predicate offenses for firearm offenses committed at 27.

Lastly, defendant is also incorrect when he argues that "if this Court finds the AHC statute ambiguous, the rule of lenity requires courts to construe this ambiguity in favor of the defendant." Def. Br. 21. The rule of lenity is a rarely used tool of last resort that "applies only to statutes containing 'grievous ambiguities'" that are so unclear that courts are "unable to do more than merely 'guess' the legislature's intent." *People v. Fiveash*, 2015 IL 117669, ¶ 34. There is no need to rely on such a rule here, as the legislature's intent with the AHC Act is clear: to protect the public from the threat created by repeat felons carrying guns. *Supra* p. 30 (collecting cases). Because defendant's interpretation of the AHC Act is contrary to that intent, this Court should reject it, just as the appellate court has repeatedly done.

In sum, the AHC Act is not ambiguous, but even if it were, defendant's interpretation is still incorrect, as it is contrary to the General Assembly's well-known concerns about gun violence, it is unworkable, and it would lead to absurd results.

III. Defendant's Sufficiency of the Evidence Claim Fails for Several Additional Reasons.

Because defendant's sufficiency of the evidence claim rests on an incorrect interpretation of the AHC Act, *see supra* Sections I-II, his claim is meritless as a matter of law and this Court need go no further. However, there are several additional reasons why defendant's sufficiency claim fails.[4]

To begin, defendant's sufficiency claim necessarily fails because it is based on new evidence that was not admitted at trial. By definition, a sufficiency claim requires a reviewing court to determine whether the evidence *at trial* was sufficient to sustain a conviction. *See, e.g., Jackson*, 443 U.S. at 318-19; *People v. Cline*, 2022 IL 126383, ¶¶ 25, 32. It therefore is settled that sufficiency claims "must be limited to evidence actually admitted at trial" and cannot depend on evidence that was not admitted at trial. *Cline*, 2022 IL 126383, ¶ 32. In *Cline*, for example, the defendant was convicted of burglary based on a fingerprint found in the victim's home. *Id.* ¶ 1. On appeal, the defendant argued that the evidence was insufficient to convict him because the prosecution's fingerprint examiner did not follow the

[4] It bears noting that one point is not in dispute: the People agree with defendant that his stipulation at trial that he had previously been convicted of armed robbery and unlawful use of a weapon by a felon does not foreclose his sufficiency claim because the stipulation did not expressly state that those convictions constituted prior qualifying offenses under the AHC Act. Def. Br. 27. The People note, however, that if counsel *had* stipulated that those convictions were qualifying prior convictions, counsel would not be in error, because under the plain language of the AHC Act, they *were* qualifying prior convictions. *Supra* Section I.

accepted methodology for identifying latent fingerprints. *Id.* ¶ 29. In making that argument, the defendant asked this Court to take judicial notice of the ACE-V method of examination as the standard followed by forensic fingerprint examiners. *Id.* This Court firmly rejected that argument:

> Defendant is now asking this court to take judicial notice of extra-record materials for the purpose of evaluating the evidence presented at trial. Our review of the sufficiency of the fingerprint evidence in this case, however, must be limited to evidence actually admitted at trial, and judicial notice cannot be used to introduce new evidentiary material not considered by the fact finder during its deliberations.

Id. ¶ 32. Accordingly, this Court rejected the defendant's sufficiency claim. *Id.* ¶¶ 32-33, 42; *see also, e.g., People v. Kelley*, 2024 IL App (1st) 220575-U, ¶¶ 24-25 (to allow a defendant to rely on evidence not admitted at trial to support a sufficiency claim on direct appeal would impermissibly usurp the role of the factfinder at trial).

Similarly, in this case, defendant's argument that he cannot be convicted of AHC is based on evidence that was not admitted at trial: (1) a PSI report (prepared after his AHC trial) that shows defendant's age, family history, and other personal characteristics; and (2) a report (drafted more than a year after defendant's AHC trial) from the Illinois Juvenile Justice Commission showing statistics of juvenile transfers in Illinois in 2018. Def. Br. 25-26. According to defendant, this new evidence shows it is "unlikely" that he would be tried in adult court if, counterfactually, he were a juvenile and committed armed robbery in 2019; thus, according to defendant, this new evidence shows his 2008 conviction for armed robbery cannot serve as a

predicate offense for his AHC conviction. *Id*. But because a sufficiency claim cannot be based on such new evidence, defendant's sufficiency claim should be rejected. *Cline*, 2022 IL 126383, ¶ 32.

Moreover, even if defendant's new evidence could be considered, it fails to support his sufficiency claim. It is settled that a sufficiency of the evidence claim has merit only if, when viewing the evidence "in the light most favorable to the State," no rational trier of fact could have found the defendant guilty. *E.g., People v. McLaurin*, 2020 IL 124563, ¶ 38 (collecting cases). Thus, when reviewing sufficiency claims, "all reasonable inferences are drawn in favor of a finding of guilt" and there is no requirement to "accept [a] defendant's innocent explanations." *People v. Bush*, 2023 IL 128747, ¶¶ 33, 36. As this Court has explained, reviewing courts should not "search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt," *People v. Jackson*, 2020 IL 124112, ¶ 70, and the People "need not disprove or rule out all possible factual scenarios" of innocence. *People v. Newton*, 2018 IL 122958, ¶ 27.

Here, defendant merely contends that it is "unlikely" he would be transferred to adult court if he committed his armed robbery offense in 2019 (the date of his AHC offense) and if the Court pretends that he was 17 in 2019 (even though he was actually 27). *E.g.*, Def. Br. 23, 26. But he fails to show that, when viewing the evidence in the light most favorable to the prosecution, "no rational trier of fact" could find that he would be transferred.

And, indeed, the new evidence defendant relies on falls far short of that standard.

Defendant first relies on statistics from an Illinois Juvenile Justice Report addressing the discretionary transfer of juveniles to adult court in 2018, the year *before* defendant committed AHC. Def. Br. 25-26. Even setting aside that the report does not address the year at issue in this case, the report fails to prove defendant's sufficiency claim. Specifically, the report shows that in 2018 three robbery or armed robbery charges (like defendant's armed robbery case) were transferred to adult court via discretionary transfer, as were other forcible felonies and even *lesser* charges, such as possession of stolen property. A45.[5] Because the report shows that in 2018 discretionary transfer motions *were granted* in robbery cases like defendant's — and for similar or lesser charges — it cannot reasonably be said that, viewing the evidence in the light most favorable to the prosecution, no rational trier of fact could find that defendant would have also been transferred to adult court. *See, e.g., McLaurin*, 2020 IL 124563, ¶ 38 (affirming conviction because, when viewing the evidence "in a light most favorable to the State," it could not be said that "no rational trier of fact" could have found the defendant guilty); *Bush*, 2023 IL 128747, ¶¶ 33-36

[5] It is possible that this report understates the number of juveniles transferred, as the report notes the difficulty of collecting data regarding transfers and expressly states there are "gaps" in the data because "there is no one system or database which contains this data" and no source has such information "readily available in all cases." Def. Appx. 29-31.

(rejecting sufficiency claim, despite defendant offering evidence of innocence, because on appeal "all reasonable inferences are drawn in favor of a finding of guilt"); *Jackson*, 2020 IL 124112, ¶ 70 (rejecting sufficiency claim because reviewing courts "need not search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt").

Defendant next relies on the PSI report created after his AHC trial to argue that he "was the type of adolescent that the new laws are meant to protect from adult criminal court" and, therefore, would not be transferred pursuant to the discretionary transfer provision. Def. Br. 25. As an initial matter, defendant's argument is inherently speculative. Even if defendant were correct that the best course of action under the current statute would be to try a juvenile similarly situated to defendant in 2008 in juvenile court, that is hardly conclusive evidence that a judge would exercise her discretion in that way. And, accordingly, a rational trier of fact could conclude that a judge in such a counterfactual scenario would have transferred defendant's case to adult court.

Indeed, it would not be an abuse of discretion for a judge today to transfer 2008-defendant to adult court for trial on an offense identical to the one for which defendant was convicted in 2008. The discretionary transfer provision of the Juvenile Court Act lists a very large number of factors that are relevant to whether a juvenile offender should be transferred to adult court, including but not limited to (1) the "circumstances" and "seriousness"

of the charged offense, including whether the offender used a deadly weapon; (2) the offender's "willingness to participate meaningfully in available services," and the "likelihood that the minor can be rehabilitated" in the juvenile system; (3) the offender's criminal history, mental health, and history in the child welfare system; (4) the services available in the juvenile system as compared to the adult system. 705 ILCS 405/5-805(3). Defendant ignores most of those factors and instead relies on the PSI report to make two small points.

First, he notes that, as of 2008 (when he committed armed robbery), he had no prior convictions. Def. Br. 25. However, if the focus is not on 2008 (when he committed armed robbery) but on 2019 (when he committed AHC), as defendant repeatedly argues it should be, *e.g., id.* at 24 (arguing that the relevant time to consider is "the time of [defendant's] arrest in this case in 2019"), then the PSI report shows that as of 2019, defendant had multiple prior convictions (including one felony conviction, in addition to his armed robbery conviction), which supports the conclusion that he would not be fit for juvenile court, SR6; *see also* Def. Br. 18 (noting that the AHC Act is focused on an offender's "current level of dangerousness" as "established by their prior offenses"). Second, defendant relies on the report to argue that he had a challenging childhood and his mother kicked him out of the house shortly before his arrest because he was drinking and smoking. Def. Br. 25. But the PSI report belies this description. Instead, it shows that defendant said that

he has a "great relationship" with his mother and "close relationship[s]" with his siblings, that he "was raised in a stable home" where his needs "were met," and that there was no abuse, neglect, or involvement of child welfare services. SC7. Thus, the report does not support defendant's contention that he lacks family support or had a difficult childhood.

Indeed, contrary to defendant's claim, when viewing the evidence in the light most favorable to the prosecution, the PSI report and related evidence show that a rational factfinder could determine that defendant would be transferred to adult court if he committed armed robbery in 2019 (and if, counterfactually, he were a juvenile in 2019). To begin, a factor that the transfer provision states should be given significant weight — the "seriousness" of the offense — supports the conclusion that transfer to adult court would be appropriate because armed robbery is a very serious and dangerous Class X felony. 720 ILCS 5/18-2. The PSI report also shows that defendant has a significant criminal history and is not amenable to rehabilitation (both of which are key factors supporting a transfer to adult court) because he has committed one crime after another, often not long after he was released from prison for a previous offense. SR6. In addition, the report shows that defendant used illegal drugs for many years (before and after his armed robbery conviction), was a gang member for years (including for years after his armed robbery conviction), and has a limited employment history, all of which further show his lack of interest in rehabilitation or

desire to follow the law and therefore make adult court the correct option. SC7-9. Accordingly, a rational trier of fact, even considering defendant's extra-record evidence, could reasonably determine that a judge would exercise her discretion to transfer 2008-defendant's case to adult court if he committed armed robbery in 2019.

In sum, defendant's sufficiency of the evidence claim fails not only because it is based on an incorrect interpretation of the AHC Act, but also because (1) it is improperly based on new evidence not admitted at trial; and (2) in any event, that new evidence fails to establish, when viewing the evidence in the light most favorable to the prosecution, that no rational juror could find defendant guilty of AHC.

IV. The Parties Agree That If Defendant's Challenge to His AHC Conviction Has Merit, Then the Proper Remedy Is to Remand for Sentencing on His Remaining Convictions.

At trial, defendant was convicted not only of AHC, but also multiple counts of unlawful use of a weapon by a felon (UUWF) based on the undisputed facts that he possessed a gun and ammunition on the night in question and had a prior qualifying felony conviction when he was 23 years old. R85; C9; *see also* 720 ILCS 5/24-1.1 (elements of UUWF). In addition, defendant also was convicted of multiple counts of aggravated unlawful use of a weapon (AUUW) based on the undisputed facts that he possessed a gun outside of his home on the night in question without having been issued a concealed carry license or a FOID card. R85; C9; *see also* 720 ILCS 5/24-1.6(a) (elements of AUUW). However, the trial court did not impose

sentences on these convictions; instead, it merged these convictions into defendant's AHC conviction. R85.

Defendant does not challenge his UUWF or AUUW convictions in this appeal, nor does the record reveal a basis to do so. To the contrary, in the appellate court defendant stated that "an appropriate remedy would be" for the Court "to reverse his AHC conviction and remand" so that the trial court could sentence defendant "on either the Class 2 UUWF or AUUW convictions." Def. App. Reply Br. 19 (collecting cases). The People agree that if this Court finds that the evidence is insufficient to sustain defendant's AHC conviction (which it should not), then this Court should remand for sentencing on his remaining convictions.

CONCLUSION

This Court should affirm the appellate court's judgment.

December 17, 2024

Respectfully submitted,

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RULE 341(c) CERTIFICATE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 45 pages.

/s/ Michael L. Cebula
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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On December 17, 2024, the foregoing **Brief of Plaintiff-Appellee the People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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Additionally, upon its acceptance by the court's electronic filing system, the undersigned will mail thirteen copies of the brief to the Clerk of the Supreme Court of Illinois, 200 East Capitol Avenue, Springfield, Illinois, 62701.

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