No. 128316

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. SHAUN N. TAYLOR, Defendant-Appellant.	On Appeal from the Appellate of Illinois, Third Judicial District, No. 3-19-0281. There on Appeal from the Circuit Court of the Fourteenth Judicial Circuit, Henry County, Illinois No. 17 CF 348. The Honorable Terence M. Patton, Judge Presiding.

BRIEF OF PLAINTIFF-APPELLEE
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POINTS AND AUTHORITIES

NATURE OF THE CASE

A Henry County jury found defendant guilty of attempted first degree murder of a peace officer. C128.[1] The trial court sentenced him to 50 years in prison: 30 years for the attempted murder, plus the mandatory 20-year firearm enhancement provided in 720 ILCS 5/8-4(c)(1)(C). C140; R700. Defendant appeals from the appellate court's judgment, which affirmed his conviction and sentence. A14, 22-23. No question is raised on the pleadings.

ISSUES PRESENTED

1. Whether the General Assembly intended that the mandatory 20-year firearm enhancement apply to a defendant convicted of the attempted murder of a peace officer.

2. Whether the trial court properly denied defendant's request to appoint a second expert to render an opinion on whether he was insane at the time of the offense after the first appointed expert opined that defendant was not.

JURISDICTION

Jurisdiction lies under Supreme Court Rules 315 and 612(b)(2). On May 25, 2022, the Court granted defendant's petition for leave to appeal.

[1] Citations to the common law record, report of proceedings, secured record, defendant's brief, and the appendix to defendant's brief appear as "C__," "R__," "SC__," "Def. Br. at __," and "A__," respectively.

STATUTES INVOLVED

720 ILCS 5/8-4(c)(1) provides that

> the sentence for attempt to commit first degree murder is the sentence for a Class X felony, except that
>
> (A) an attempt to commit first degree murder when at least one of the aggravating factors specified in paragraphs (1), (2), and (12) of subsection (b) of Section 9-1 [720 ILCS 5/9-1] is present is a Class X felony for which the sentence shall be a term of imprisonment of not less than 20 years and not more than 80 years;
>
> (B) an attempt to commit first degree murder while armed with a firearm is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court;
>
> (C) an attempt to commit first degree murder during which the person personally discharged a firearm is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court;
>
> (D) an attempt to commit first degree murder during which the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court; and
>
> (E) if the defendant proves by a preponderance of the evidence at sentencing that, at the time of the attempted murder, he or she was acting under a sudden and intense passion resulting from serious provocation by the individual whom the defendant endeavored to kill, or another, and, had the individual the defendant endeavored to kill died, the defendant would have negligently or accidentally caused that death, then the sentence for the attempted murder is the sentence for a Class 1 felony.

720 ILCS 5/9-1 provides, in relevant part:

> (b) Aggravating Factors. A defendant who at the time of the commission of the offense has attained the age of 18 or more and who has been found guilty of first degree murder may be sentenced to death if:

> (1) the murdered individual was a peace officer or fireman killed in the course of performing his official duties, to prevent the performance of his or her official duties, or in retaliation for performing his or her official duties, and the defendant knew or should have known that the murdered individual was a peace officer or fireman; or
>
> (2) the murdered individual was an employee of an institution or facility of the Department of Corrections, or any similar local correctional agency, killed in the course of performing his or her official duties, to prevent the performance of his or her official duties, or in retaliation for performing his or her official duties, or the murdered individual was an inmate at such institution or facility and was killed on the grounds thereof, or the murdered individual was otherwise present in such institution or facility with the knowledge and approval of the chief administrative officer thereof; or . . .
>
> (12) the murdered individual was an emergency medical technician – ambulance, emergency medical technician – intermediate, emergency medical technician – paramedic, ambulance driver, or other medical assistance or first aid personnel, employed by a municipality or other governmental unit, killed in the course of performing his official duties, to prevent the performance of his official duties, or in retaliation for performing his official duties, and the defendant knew or should have known that the murdered individual was an emergency medical technician – ambulance, emergency medical technician – intermediate, emergency medical technician – paramedic, ambulance driver, or other medical assistance or first aid personnel.

STATEMENT OF FACTS

After fleeing from a traffic stop initiated by Illinois State Police Trooper Andrew Scott, defendant armed himself with an AR-15 semiautomatic rifle and a .40-caliber handgun, hid in cornfield, and lay in wait for Scott. R283-99, 301-02, 398-400, 451. When Scott arrived, defendant fired the rifle over 20 times at the officer. *Id*. After an hours-long

search for defendant, he surrendered, and he was charged with attempted first degree murder of a peace officer and aggravated discharge of a firearm. R381, C15-16.

I. Pretrial Psychological Examination

Prior to trial, the court appointed clinical psychologist Dr. Kirk Witherspoon to examine defendant to determine whether he was fit to stand trial and whether he could raise the defense of not guilty by reason of insanity (NGRI). R33. After evaluating defendant, Witherspoon diagnosed him with posttraumatic stress disorder stemming from his military service, but found that he was fit to stand trial and did not meet the threshold for asserting an NGRI defense. SC10, 19. In an addendum to the report, Witherspoon noted that defendant's self-reported use of "psychostimulants" at the time of the shooting precluded his ability to plead NGRI. A9. Witherspoon also provided a handwritten note to defense counsel, which stated:

> [Defendant] is a borderline case. I do not think he meets the threshold of NGRI. However, if his parents can afford it, you may wish to seek a second opinion. If so, I can give you the names of a couple of other good psychologists who can do this work.

SC22.

Based on this note, defendant asked the trial court to appoint a second expert, at the State's expense, to examine him and determine whether he could assert an NGRI defense. SC11-12. The trial court denied the motion, explaining that Witherspoon had not limited or qualified his opinion that

defendant could not establish an NGRI defense, nor had he recommended in his report that a second expert examine defendant. R69-70. Defense counsel asked the court if it would reconsider its ruling if he could secure a "firmer recommendation" from Witherspoon. R71. The trial court agreed to hear any new information from the expert, *id.,* but defense counsel never provided any. Defendant did not pursue an NGRI defense at trial. *See* R584-98.

II. Trial

The trial evidence showed that Trooper Scott stopped defendant on Interstate 80 one night in October 2017. R282. During the traffic stop, a second officer arrived with a canine unit, and the dog alerted during a walk around defendant's car. R289-90. When the officers ordered defendant out of the car, he instead "spe[d] away." R293.

At the next exit, defendant parked his car a short distance down a country road. R297. He armed himself with an AR-15 semiautomatic rifle and a .40-caliber handgun, and then hid in the cornfield across from his car. R299, 376, 398-400. About 10 minutes later, Scott found the abandoned car and, when he got out of his own vehicle to look for defendant, R299, defendant began firing at him, R301. Scott escaped into the nearby cornfield and ran for shelter behind other approaching police vehicles. R302. As he fled, bullets continued to fly past Scott. *Id.* Defendant hid in the field for several hours before finally surrendering. R381.

The jury found defendant guilty of attempted murder of a peace officer and aggravated discharge of a firearm. R651.

III. Sentencing

The trial court merged the aggravated discharge of a firearm conviction into the attempted murder of a peace officer conviction, and proceeded to sentencing on the latter. Defendant's crime subjected him to a prison sentence of 20 to 80 years for attempted murder of a peace officer, 720 ILCS 5/8-4(c)(1)(A), plus a mandatory 20-year firearm enhancement for personally discharging a firearm while attempting to commit first degree murder, *id.* § 8-4(c)(1)(C).

At sentencing, defendant argued that the mandatory 20-year firearm enhancement did not apply to defendants convicted of attempted murder of a peace officer. R673-75. He further argued that application of the firearm enhancement to him would constitute an impermissible double enhancement. *Id.* The trial court disagreed, explaining that the firearm enhancement and sentencing exposure for attempted murder of a peace officer addressed different harms, and the General Assembly intended for both to apply to defendant's crime. R676-77.

Following a hearing, the trial court sentenced defendant to 30 years for attempted murder of a peace officer, plus the mandatory 20-year firearm enhancement. R700.

IV. Appellate Court Decision

On appeal, defendant argued that the trial court erred when it (1) applied the mandatory 20-year firearm enhancement to his sentence, and (2) denied his request for the appointment of a second expert to examine his sanity at the time of his offense. A8. A majority of the appellate court rejected both arguments and affirmed defendant's conviction and sentence. *Id.*

Specifically, the appellate majority found that defendants convicted of attempted murder of a peace officer are subject to the mandatory 20-year firearm enhancement. A19-23. It explained that the General Assembly clearly intended that subsection (c)(1)(A) (providing the baseline sentence for attempted murder of a peace officer) and subsection (c)(1)(C) (the firearm enhancement) be applied together to address the "separate evils" that each subsection sought to deter. A20. Further, nothing in the statute's plain language prohibited the application of both subsections, and defendant's disjunctive reading would lead to absurd results. A17-21. The appellate majority also found that application of both statutory subsections would not constitute an impermissible double enhancement because subsection (c)(1)(A) established the sentencing range for attempted murders committed against certain individuals based on their status, and thus was not a sentencing enhancement. A19.

Moreover, the appellate majority found, the trial court did not abuse its discretion when it denied defendant's request for a second court-appointed expert. A14. Witherspoon had provided a thorough examination and diagnosis of defendant, which satisfied constitutional requirements. A12-14. The majority also held that defendant was not entitled to a second expert pursuant to section 115-6 of the Code of Criminal Procedure (725 ILCS 5/115-6). A12-14.

Justice Lytton concurred in part and dissented in part. A23-28. He agreed that the trial court properly denied defendant's request for a second appointed expert. A23. But he would have vacated defendant's sentence because "[t]he semicolons between the subsections [in 720 ILCS 5/8-4(c)(1)(A)] . . . indicate that each exception must be read disjunctively," thus prohibiting application of the firearm enhancement to defendant's attempted murder. A24.

STANDARDS OF REVIEW

Whether the General Assembly intended the mandatory firearm enhancement in subsection (c)(1)(C) to apply to defendant's sentence under subsection (c)(1)(A), and whether applying that enhancement constitutes an impermissible double enhancement, present statutory interpretation questions, which this Court reviews de novo. *People v. Hardman*, 2017 IL 121453, ¶ 19; *see also People v. Phelps*, 211 Ill. 2d 1, 12 (2004).

This Court reviews the trial court's decision not to appoint an additional expert for an abuse of discretion. *See People v. Page*, 193 Ill. 2d 120, 153 (2000); *People v. Lawson*, 163 Ill. 2d 187, 230 (1994).

ARGUMENT

The mandatory 20-year firearm enhancement applies to defendant because he was convicted of Class X attempted murder. The plain language of subsection (c)(1) does not prohibit application of the enhancement to defendants convicted of a category of attempted murders that the General Assembly decided warrants a greater sentencing range due to the status of the targeted individual. To the contrary, subsection (c)(1)(A) provides the "term of imprisonment" when a defendant attempts to murder a peace officer, and subsection (c)(1)(C) requires that 20 years be "added to the term of imprisonment," 720 ILCS 5/8-4(c)(1)(A), (C). Thus, the plain language demonstrates that the General Assembly intended the firearm enhancement to apply to defendant's attempted first degree murder. Moreover, interpreting the plain language as written effectuates the distinct purposes underlying each of the subsections, *i.e.*, to deter and protect society from (1) violence against victims who operate in dangerous situations and take heightened risks in performing their duties, and (2) the use of firearms in attempted murders.

Construing the statute consistent with its plain language and purpose does not constitute an impermissible double enhancement. Subsection

(c)(1)(A) is not an enhancement, but instead provides a baseline sentencing range for attempted murders of specified categories of victims, while subsection (c)(1)(C) mandates imposition of an enhancement to the sentence a court imposes under (c)(1)(A) if the person discharged a firearm in committing the attempted murder. Thus, two separate factors —the identity of the victim and the use of a firearm — must be proven to apply both the different sentencing range and firearm enhancement. And because the two factors are starkly distinct, no single factor was used to twice to enhance defendant's sentence, so there is no impermissible double enhancement.

Finally, the trial court properly denied defendant's request for a second mental health expert because the appointment of Witherspoon satisfied defendant's constitutional right to access an expert. A defendant does not have a constitutional right to the appointment of a particular expert, or a specific expert opinion. Witherspoon evaluated defendant and provided a thorough and detailed report of his mental condition at the time of the offense, and defense counsel had regular access to and contact with Witherspoon. And because defendant has expressly argued that section 115-6 of the Code of Criminal Procedure (725 ILCS 5/115-6) does not apply to him, he has waived any claim that he had a statutory right to a second expert. Accordingly, defendant failed to show that a second expert was required.

I. The General Assembly Plainly Stated That the Mandatory Firearm Enhancement Applies to Defendant.

A. Legislative intent is the overriding concern when interpreting statutes.

To determine whether the firearm enhancement was properly applied to defendant, this Court must construe the relevant statutory provision, 720 ILCS 5/8-4(c)(1). The primary goal of statutory interpretation is "to determine and effectuate the legislature's intent." *Hardman*, 2017 IL 121453, ¶ 19. Ordinarily, the plain and ordinary meaning of the statutory language is the best indicator of the legislature's intent. *Id.* Where a statute is clear and unambiguous, courts cannot read into the statute conditions or terms not expressed by the legislature. *People v. Glisson*, 202 Ill. 2d 499, 505 (2002). In determining a statute's plain meaning, a court may consider the problems sought to be remedied, the reason for the law, the purposes to be achieved, and the consequences of construing a statute one way or another. *People v. Gutman*, 2011 IL 110338, ¶ 12. Thus, where an overly technical reading of the statute would produce absurd results, the statute must be construed to avoid the absurdity. *People v. Hanna*, 207 Ill. 2d 486, 498 (2003).

B. Subsection (c)(1)'s plain language and purpose establish that the firearm enhancement applies to defendant's attempted murder.

Subsection (c)(1)'s plain language and purpose require application of the firearm enhancement to any attempted murder that constitutes a Class X felony, including defendant's attempted murder of a peace officer.

Subsection (c)(1) provides that "the sentence for attempt to commit first degree murder is the sentence for a Class X felony." 720 ILCS 5/8-4(c)(1); 730 ILCS 5/5-4.5-25(a) (sentencing range for Class X felony is 6 to 30 years). It then lists four exceptions when an attempt to commit first degree murder is still a Class X felony, but the sentencing range is not 6 to 30 years in prison, and a final exception when the attempted murder is not a Class X felony. 720 ILCS 5/8-4(c)(1).

First, when a defendant attempts to kill a person belonging to a specified category of victims (including peace officers, firefighters, certain emergency personnel, or correctional officers), "the sentence shall be a term of imprisonment of not less than 20 years and not more than 80 years." *Id.* § 8-4(c)(1); 720 ILCS 5/9-1(b)(1)-(2), (12). Second, when the defendant was armed with a firearm during the attempted murder, "15 years shall be added to the term of imprisonment imposed by the court." 720 ILCS 5/8--4(c)(1)(B). Third, when the defendant personally discharged a firearm during the attempted murder, "20 years shall be added to the term of imprisonment." *Id.* § 8-4(c)(1)(C). Fourth, when the defendant personally discharged a firearm during the attempted murder and the discharge of the firearm proximately caused a certain level of injury to the victim, "25 years or up to a term of natural life shall be added to the term of imprisonment." *Id.* § 8-4(c)(1)(D). Finally, if a defendant establishes that he acted under serious provocation, then "the sentence for the attempted murder is the sentence for a Class 1

felony." *Id.* § 8-4(c)(1)(E). The list of exceptions is separated by semicolons and the word "and." *Id.* § 8-4(c)(1).

Nothing in subsection (c)(1) expressly prohibits applying the firearm enhancement in subsection (c)(1)(C) to the term of imprisonment provided in subsection (c)(1)(A) for the attempted murder of a peace officer. To the contrary, under the plain language of the statute, by using the word "and" between the subsections, the General Assembly plainly stated its intent that the subsections apply conjunctively. This Court "long ago observed the obvious: 'The conjunction "and" signifies and expresses the relation of addition.'" *People v. A Parcel of Prop. Commonly Known As 1945 N. 31st St.*, 217 Ill. 2d 481, 500 (2005) (quoting *City of LaSalle v. Kostka*, 190 Ill. 130, 137 (1901)) (cleaned up). In other words, when the General Assembly creates a list using "and" between the elements, it intends the elements of the list to work in combination. *See id.* at 501. The General Assembly provided a 20- to 80-year "term of imprisonment" for "an attempt to commit first degree murder" of a peace officer, 720 ILCS 5/8-4(c)(1)(A); *id.* § 9-1(b)(1), and further provided that "20 years shall be added to the term of imprisonment" when the defendant "personally discharged a firearm" during the "attempt to commit first degree murder," *id.* § 8-4(c)(1)(C). Thus, the statute's plain language requires a court to sentence a defendant convicted of the attempted murder of a peace officer to a term of imprisonment between 20 and 80 years, *and* that 20 years be added to that term of imprisonment when the defendant

personally discharged a firearm during the attempted murder. *Id.* § 8-4(c)(1)(A), (D); *id.* § 9-1(b)(1).

Not only is this reading compelled by the plain language, this is the only reading that is consistent with the problems the General Assembly sought to remedy and the purposes it sought to achieve. *See Gutman*, 2011 IL 110338, ¶ 12; *Hanna*, 207 Ill. 2d at 489. Subsection (c)(1)(A) provides a heightened sentencing range to deter violence against peace officers, firefighters, emergency medical technicians (EMTs), and other individuals who operate in dangerous situations and take heightened risks in performing their duties. *People v. Smith*, 2012 IL App (1st) 102354, ¶ 115. And subsection (c)(1)(C) recognizes "the significant danger posed when a firearm is involved in" any offense, including attempted murder, *People v. Sharpe*, 216 Ill. 2d 481, 524-25 (2005); *People v. Morgan*, 203 Ill. 2d 470, 488 (2003), *overruled on other grounds by Sharpe*, 216 Ill. 2d at 517-21; it imposes "an additional penalty . . . when [an attempted] murder is committed with a weapon that not only enhances the perpetrator's ability to kill the intended victim, but also increases the risk that grievous harm or death will be inflicted upon bystanders," *Sharpe*, 216 Ill. 2d at 524-25; and thus seeks to deter the use of firearms through the added penalty, *Smith*, 2012 IL App (1st) 102354, ¶ 115. Thus, when a defendant attempts to kill a peace officer by personally discharging a firearm, the heightened sentencing range provided in subsection (c)(1)(A) addresses the defendant's violence against the specific

type of victim, and the enhancement provided in subsection (c)(1)(C) addresses the increased danger posed by the defendant's use of the firearm. Accordingly, to effectuate the General Assembly's intent to address the distinct dangers underlying each of the subsections, both the heightened sentencing range for an attempted murder of a peace officer *and* the enhancement for personally discharging the firearm must apply.

Defendant's contrary position is inconsistent with the statute's plain language and purpose, and leads to absurd results. First, defendant's focus on semicolons, *see* Def. Br. 13-14, disregards that the General Assembly used the word "and" to separate the subsections. *See 1945 N. 31st Street*, 217 Ill. 2d at 500 (use of word "and" signifies addition). Moreover, semicolons do not always imply a disjunctive list; instead, in either conjunctive or disjunctive lists, semicolons are required where the items listed contain internal commas, as three of the five subsections in (c)(1) do. *See* 720 ILCS 5/8-4(c)(1)(A), (D), (E); *see, e.g., The Chicago Manual of Style* ¶¶ 6.21, 6.60 (15th ed. 2003). Given that semicolons were grammatically required — regardless of whether the list was intended to be conjunctive or disjunctive — their use does not inform the statutory analysis, much less trump the General Assembly's use of the word "and" to reflect its intent that both statutory subsections apply.

Second, defendant's suggestion that the firearm enhancements apply only to "simple" attempted murders (e.g., attempted murders of civilians), *see*

Def. Br. 11-12, is contrary to the statute's plain language and purpose. The General Assembly did not call an attempted murder subject to the heightened sentencing range in subsection (c)(1)(A) by a different name, such as "aggravated" attempted murder. 720 ILCS 5/8-4(c)(1)(A); *see Glisson*, 202 Ill. 2d at 505 (courts cannot read into the statute conditions or terms not expressed by the legislature). Rather, the General Assembly used the exact same language to describe the crime in subsection (c)(1)(A) as it did for the enhancements in subsections (c)(1)(B)-(D): "an attempt to commit first degree murder." 720 ILCS 5/8-4(c)(1)(A)-(D).

Indeed, an attempted murder does not cease being an attempted murder merely because the victim's occupation places them in a category that the General Assembly believes warrants a heightened baseline sentencing range. And the danger posed by the use of a firearm in an attempted murder does not dissipate merely because the attempt was against a peace officer. *See Morgan*, 203 Ill. 2d at 488 (refusing to "second-guess the legislature's determination that the protection of society necessitates the imposition of severe penalties whenever a firearm is used in the course of an offense"). Therefore, giving subsection (c)(1)'s language its plain and natural reading in light of the statute's purposes, it is clear that the firearm enhancements apply to any Class X attempted first degree murder, including that of a peace officer or other protected individual. *See Midwest Sanitary Serv. v.*

Sandberg, 2022 IL 127327, ¶ 24 ("When interpreting statutory language, we are to give effect to the plain and ordinary meaning.").

Third, defendant is incorrect that application of the enhanced sentencing range in subsection (c)(1)(A) alone is sufficient to effectuate the legislative purpose of subsection (c)(1)(C). *See* Def. Br. 15, 24-25. A hypothetical illustrates this point: if, for instance, an individual personally discharges a firearm in his attempt to kill an accountant, he would be subject to a mandatory minimum term of imprisonment of 26 years (the 6-year mandatory minimum for attempted murder plus the 20-year firearm enhancement). But, under defendant's interpretation, if an individual committed the exact same act against a police officer or firefighter, he would be subject only to a minimum sentence of 20 years under subsection (c)(1)(A). Consequently, under scenarios that differ only in the victim's occupation — the very factor that the General Assembly determined requires a heightened minimum sentence — the individual who personally discharged a firearm to target the protected victim would be subject to a *lesser* minimum sentence than would otherwise apply. Moreover, it defies common sense to conclude that the 14-year increase in the minimum sentence (from 6 to 20 years) when an individual attempts to murder a peace officer is sufficient to advance not only the legislative goals underlying the heightened minimum sentence for that crime, but also the distinct goals of the firearm enhancements, given that the General Assembly provided a greater, 20-year enhancement when

the perpetrator personally discharges a firearm during an attempted murder. In sum, defendant's interpretation disregards the legislature's plainly stated intent to address both concerns.

Finally, defendant's argument that the enhanced sentencing range in subsection (c)(1)(A) itself encompasses a firearm enhancement, rests on the false premise that the General Assembly enacted subsection (c)(1)(A) solely "to deter the use of firearms in the killing of police officers." Def. Br. 15-17. Subsection (c)(1)(A)'s plain language provides a heightened baseline sentencing range for the attempted murder of certain categories of victims, including many who are not police officers, and contains no limitation on the weapon that may be used in committing the attempted murder against the protected victims. *See* 720 ILCS 5/8-4(c)(1)(A); *id.* § 9-1(b)(1), (2), (12); *see also Cassidy v. China Vitamins, LLC*, 2018 IL 122873, ¶ 22 ("Our rules of statutory construction do not permit us to add new limitations . . . that the legislature did not specifically enact."); Def. Br. 16 (noting that statute was enacted "to deter intentional killings of police officers" and reasoning that "Because removing firearms as the cause of police officer deaths is what will accomplish the purpose of reducing the intentional killings of police officers to a negligible amount, subsection (A) was aimed at the use of firearms by offenders in the killing of police officers."): Def. Br. 17 (arguing that legislature did not enact heightened sentencing range of 20 to 80 years to "protect police officers from attacks with a 'butter knife'" and further

contending that legislature must have understood that other weapons did not require the same level of deterrence, for "only a foolish person will bring a knife or a club to a gunfight").

Defendant's argument overlooks that subsection (c)(1)(A) applies equally to firefighters, 720 ILCS 5/9-1(b)(1), correctional officers, *see id.* § 9-1(b)(2), and EMTs, *see id.* § 9-1(b)(12), who do not carry the same protective equipment and sidearm that defendant presupposes sufficiently protect police officers; nor is it obvious that their risk of harm arises solely, or even likely, from firearms. *See* Def. Br. 17. Nor is it clear that firearms always impose the greater danger. For example, in the controlled environment of a prison where firearms are generally unavailable, a correctional officer is far less likely to face danger from a firearm than a makeshift knife or club. *See id.* It would be illogical to conclude, contrary to the plain language of the statute, that the General Assembly intended subsection (c)(1)(A) to apply only to attempted murders committed with a firearm. *See Croissant v. Joliet Park Dist.*, 141 Ill. 2d 449, 455 (1990) ("Statutes are to be construed in a manner that avoids absurd or unjust results."). Thus, subsection (c)(1)(A)'s purpose is not limited to deterring the use of firearms in the attempted murders of police officers, as defendant contends.

Even putting to one side the fact that defendant reads into the statute a limitation that the legislature did not express, *see Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶ 24 (Courts may not insert "exceptions,

limitations, or conditions the legislature did not express, nor may [they] add provisions not found in the law."), defendant's reading would impermissibly render the firearms enhancements superfluous, *see Schultz v. St. Clair Cnty.*, 2022 IL 126856, ¶ 27 ("[E]very clause of a statute must be given a reasonable meaning, if possible, and should not be rendered meaningless."). Assuming the truth of defendant's assertion that the majority of police officer homicides result from firearms, it is also true that the majority of murders in the United States are accomplished by firearm. FBI, U.S. Dep't of Justice, *2019 Crime in the United States*: Expanded Homicide Date Table 8, https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/expanded-homicide-data-table-8.xls (last visited Jan. 23, 2023). Therefore, by defendant's logic, when the General Assembly criminalized the attempted murder of a civilian, it must have also intended to deter only attempted murders involving a firearm. Applying such reasoning would render the firearm enhancements in subsections (c)(1)(B)-(D) impermissibly superfluous. *See Schultz*, 2022 IL 126856, ¶ 27. In sum, the Court should reject defendant's strained and counter-textual interpretation of subsection (c)(1).

C. Subsection (c)(1)'s history confirms that the General Assembly intended the firearm enhancements to apply to defendant's attempted murder of a peace officer.

Because the General Assembly's intent is clear from subsection (c)(1)'s plain language, the Court need not consider the legislative history to aid in construction of the statute. *Kunkel v. Walton*, 179 Ill. 2d 519, 534 (1997).

However, subsection (c)(1)'s history further confirms the General Assembly's intent to apply the mandatory firearm enhancements to attempted murders of peace officers.

In *People v. Douglas*, 371 Ill. App. 3d 21 (1st Dist. 2007), the appellate court interpreted subsection (c)(1)'s predecessor — which included only subsections (c)(1)(A)-(D), and did not use the word "and" between the subsections, *see* 720 ILCS 5/8-4(c)(1) (2004) — and concluded that the mandatory firearm enhancements did not apply to Douglas's conviction for attempted murder of a peace officer. *Douglas*, 371 Ill. App. 3d at 26. The court reasoned that the legislature "might have believed" the longer sentencing range under subsection (c)(1)(A) was severe enough that no further enhancement was required. *Id.*

But two years after *Douglas's* disjunctive reading of subsections (c)(1)(A)-(D), the General Assembly added subsection (c)(1)(E) and inserted the word "and" to separate the subsections. 720 ILCS 5/8-4(c)(1) (2010). Because "and" is most commonly used to denote a conjunctive relationship, *see 1945 N. 31st St.*, 217 Ill. 2d at 500; *see also supra* at 11, and the General Assembly chose to separate the subsections by "and" rather than "or" after the appellate court's disjunctive reading, the reasonable inference is that the General Assembly disagreed with *Douglas* and amended the statute to correct the appellate court's erroneous interpretation. Consequently, contrary to defendant's argument, Def. Br. 21-23, the legislative history of

subsection (c)(1) underscores the General Assembly's intent to apply the mandatory firearm enhancements to an attempted murder of a peace officer. *See In re D.F.*, 208 Ill. 2d 223, 251 (2003) ("An amendment that contradicts a recent interpretation of a statute is an indication that such interpretation was incorrect.") (cleaned up).

D. The general bar against double enhancement does not prohibit the application of the mandatory firearm enhancements to convictions under subsection (c)(1)(A).

The general bar against double enhancement does not prohibit the application of the firearm enhancements to convictions under subsection (c)(1)(A).

"A double enhancement occurs when either (1) a single factor is used both as an element of an offense and as a basis for imposing a harsher sentence than might otherwise have been imposed, or (2) the same factor is used twice to elevate the severity of the offense itself." *People v. Guevara*, 216 Ill. 2d 533, 545 (2005). "The prohibition against double enhancements is a rule of statutory construction, premised on the assumption that the legislature considered the factors inherent in the offense in fashioning the appropriate range of punishment for that offense," but "where the legislature clearly intends for there to be a double enhancement, and that intention is clearly expressed, there is no prohibition." *Id.* at 545-46.

Although defendant correctly notes that the firearm enhancements provided in subsections (c)(1)(B)-(D) may not be combined with each other, *see* Def. Br. 12, it does not follow that those enhancements do not apply to

sentences imposed under subsection (c)(1)(A). The multiple firearm enhancements cannot be combined because the combination would create an impermissible double enhancement, for each subsequent subsection builds upon the action identified by the preceding subsection, *i.e.,* one cannot discharge a gun or cause great bodily harm with it without also being armed with the gun. *Compare* 720 ILCS 5/8-4(c)(1)(B)-(D). Indeed, it is clear that each subsequent firearm enhancement encompasses the former, with the legislature adding a further five years for the more serious conduct: if one possess a firearm they receive 15 years, if they fire it, they receive 5 more (20 years), and if they cause great bodily harm, they receive still 5 more (25 years). *Id.*

Yet the same reasoning does not apply to subsection (c)(1)(A) because its combination with any of the firearm enhancements does not constitute a double enhancement. No single factor was used more than once to enhance defendant's sentence. The factor that triggers subsection (c)(1)(A)'s higher sentencing range is the attempted murder victim's occupation as a peace officer, firefighter, correctional officer, or specified medical assistance employee. *See* 720 ILCS 5/8-4(c)(1)(A); s*ee also* 720 ILCS 5/9-1(b)(1),(2), (12). By contrast, the factor that triggers subsection (c)(1)(C)'s sentencing enhancement is the defendant's personal discharge of a firearm during the attempted murder. *See* 720 ILCS 5/8-4(c)(1)(C). Thus, there is no double enhancement. *See Phelps*, 211 Ill. 2d at 12.

Defendant's contrary argument that both subsection (c)(1)(A) and the firearm enhancements are based on the use of a firearm, *see* Def. Br. 15-16, disregards all the scenarios in which an attempted murder may implicate one subsection but not the other. For example, if an individual attempted to kill a peace officer or other protected-status victim by stabbing the victim with a knife, hitting them with a car, using an explosive device, or choking them, the individual would be guilty of attempted murder under subsection (c)(1)(A), but there would be no basis upon which to apply subsection (c)(1)(C)'s firearm enhancement. Conversely, if an individual attempted to murder anyone other than a protected status-victim by personally shooting the person with a firearm, then the mandatory firearm enhancement in subsection (c)(1)(C) would apply, but the sentencing range provided in subsection (c)(1)(A) would not.

Defendant's remaining arguments that the mandatory firearm enhancement is a double enhancement because subsection (c)(1)(A) inherently encompasses subsections (c)(1)(B)-(D), *see* Def. Br. 15-17, merely repeats his unpersuasive arguments that the enhancements are barred by the statute's plain language. *See supra* Section I.B.

Finally, even if the addition of the mandatory firearm enhancement to defendant's conviction under subsection (c)(1)(A) did constitute a double enhancement, it would not be an *impermissible* double enhancement. Double enhancement is permissible where the legislature clearly expresses an

intention to do so. *Phelps*, 211 Ill. 2d at 15. As argued above, the plain language of the statute clearly expresses the General Assembly's intent for the mandatory firearm enhancements to apply to convictions pursuant to subsection (c)(1)(A). *See supra* Section I.B. Consequently, the combination of subsection (c)(1)(A) and subsections (c)(1)(B)-(D) is permissible regardless of whether it constitutes a double enhancement.

In sum, subsections (c)(1)(A) and (c)(1)(C) are plainly based on separate factors that serve distinct legislative goals and thus do not constitute a double enhancement. Moreover, even if there was a double enhancement, it was clearly intended by the General Assembly. Consequently, defendant's mandatory 20-year sentencing enhancement was not prohibited as an impermissible double enhancement.

E. Defendant's remaining arguments are unavailing.

Defendant's remaining arguments that the mandatory firearm enhancements do not apply to a defendant convicted of attempted murder of a peace officer are unpersuasive.

Apprendi v. New Jersey, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), are inapposite. *See* Def. Br. 13-14. Neither case presents an issue of statutory interpretation; instead, both cases hold that the Sixth Amendment requires that any fact, other than a prior conviction, that increases the penalty for a crime beyond the prescribed statutory range must be proven to the factfinder beyond a reasonable doubt. *Alleyne*, 570 U.S. at 107-08; *Apprendi*, 530 U.S. at 483. Here, the jury found beyond a

reasonable doubt that defendant committed attempted murder, that the victim was a peace officer, and that he personally discharged a firearm during the attempted murder. Thus, *Alleyne* and *Apprendi* were satisfied.

Defendant does not argue otherwise, and instead contends that because each fact that alters the sentencing range in subsection (c)(1) — the victim's occupation and firearm enhancement — is an element that must be proven to the factfinder beyond a reasonable doubt to satisfy the Sixth Amendment, then each of subsection (c)(1)'s provisions constitutes a distinct crime and cannot be combined to require a different, greater sentencing range without running afoul of the Sixth Amendment. Def. Br. 13. But neither *Apprendi* nor *Alleyne* prohibits combining multiple, adequately proven facts to increase the sentencing range that applies to a defendant's conduct. To the contrary, each of the facts becomes an element of the crime and, so long as all the elements are proven beyond a reasonable doubt, the increased sentencing range may apply.

Some panels of the First District of the Appellate Court have held that section (c)(1) must be read disjunctively — and consequently subsection (c)(1)(A) and the mandatory firearm enhancements cannot be combined — because subsection (c)(1)(E) cannot be combined with the other subsections. *See People v. Phagan*. 2019 IL App (1st) 153031; *see also People v. Holley*, 2019 IL App (1st) 161326, ¶ 30. But while the firearm enhancements provided in subsections (c)(1)(B)-(D) may not be added to attempted murders

falling under subsection (c)(1)(E), the reasoning for their exclusion does not apply to attempted murders falling under subsection (c)(1)(A). Subsection (c)(1)(E) mitigates the sentence for a defendant convicted of attempted murder who shows that they acted following a serious provocation, providing that the sentence for the mitigated crime is a Class 1 felony. 720 ILCS 5/8-4(c)(1)(E). Thus, the General Assembly made clear that it intended subsection (c)(1)(E) to work separately from the rest of the subsections because it renders the crime a Class 1 felony, while the other subsections all explicitly involve a Class X felony. *Compare* 720 ILCS 5/8-4(c)(1)(A)-(D) *with* 720 ILCS 5/8-4(c)(1)(E). Moreover, the legislature's intent to separate subsection (c)(1)(E) from the other exceptions is clear because its purpose is diametrically opposed to the others: subsection (c)(1)(E) *mitigates* the crime based on the offender's less culpable behavior, while subsections (c)(1)(A)-(D) aggravate the crime for more culpable behavior. *See id.* But the circumstances that foreclose subsection (c)(1)(E)'s combination with the mandatory firearm enhancements do not exist between subsection (c)(1)(A) and the enhancements. Both subsection (c)(1)(A) and the enhancements refer to a Class X felony, and their similar intended purposes — to provide a more serious punishment for more dangerous and culpable behavior — do not conflict. *See* 720 ILCS 5/8-4(c)(1)(A)-(D). Thus, there is no reason to believe the General Assembly did not intend them to work in concert. Accordingly,

the reasoning of *Phagan* and *Holley* is unpersuasive, and those cases should be overruled.

Finally, because the General Assembly clearly stated its intent to add 20 years to the term of imprisonment of not less than 20 years and not more than 80 years provided in subsection (c)(1)(A), the rule of lenity does not apply. *See* Def. Br. 18-21. Pursuant to the rule of lenity, ambiguous criminal statutes are typically construed in the defendant's favor. *People v. Johnson*, 2017 IL 120310, ¶ 30. But this Court has repeatedly warned that the rule of lenity does not permit a court "to construe a statute so rigidly as to defeat the intent of the legislature." *Id.*; *see also People v. Williams,* 2016 IL 118375, ¶ 15; *People v. Jackson*, 2011 IL 110615, ¶ 21. As established above, the plain language of subsection (c)(1) unambiguously requires the trial court to add 20 years to the term of imprisonment provided in subsection (c)(1)(A) for the attempted murder of a peace officer. And applying the firearm enhancement is consistent with General Assembly's intent to deter both attempted murders of peace officers and other categories of victims, and the use of firearms. Consequently, the rule of lenity is not implicated. *See Williams,* 2016 IL 118375, ¶ 15 (rule of lenity does not apply to override the legislature's clear intent); *People v. Fiveash*, 2015 IL 117669, ¶ 34 ("Critically, the rule of lenity applies only to statutes containing grievous ambiguities, leaving us unable to do more than merely guess the legislature's intent." (cleaned up)).

II. The Trial Court Did Not Abuse its Discretion When It Declined to Appoint Defendant a Second Expert.

A. A defendant is entitled to one appointed expert to evaluate his sanity at the time of the offenses and has no right to an expert of his choice or to the appointment of a second expert.

1. United States Supreme Court Precedent

The United States Supreme Court first recognized an indigent defendant's constitutional right to a mental health expert at the State's expense in *Ake v. Oklahoma*, 470 U.S. 68 (1985). There, the trial court denied the indigent defendant's request to appoint a psychiatric expert where an insanity defense was the sole issue at defendant's capital murder trial. *Id.* at 72. Reversing the defendant's conviction, the Supreme Court held "when a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the State must, at a minimum, assure the defendant access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense." *Id.* at 83. The Court noted, however, that a defendant does not have "a constitutional right to choose a psychiatrist of his personal liking or to receive funds to hire his own." *Id.* Nor must the State "purchase for an indigent defendant all the assistance that his wealthier counterpart might buy." *Id.* at 77.

In *McWilliams v. Dunn*, 137 S. Ct. 1790 (2017), the Supreme Court reiterated that under *Ake*, "when certain threshold criteria are met, the State must provide an indigent defendant with access to a mental health expert

who is sufficiently available to the defense and independent from the prosecution to effectively 'assist in evaluation, preparation, and presentation of the defense.'" *McWilliams*, 137 S. Ct. at 1793 (quoting *Ake*, 470 U.S. at 83). McWilliams was charged with rape and murder and requested a psychiatric evaluation. *Id.* at 1794. The prosecution convened a commission of three psychiatrists who, after an examination, determined he had not suffered from mental illness at the time of the offense. *Id.* at 1794-95. After the jury found McWilliams guilty, a neuropsychologist examined McWilliams for sentencing and concluded that McWilliams was exaggerating his symptoms but also had genuine mental health problems. *Id.* at 1795-96. At the sentencing hearing, defense counsel repeatedly informed the trial court that he could not understand McWilliams's medical records and the experts' reports without further help from an expert. *Id.* at 1796-97. But the trial court refused to appoint an expert and offered counsel only a few hours to review the documents. *Id.* The trial court sentenced McWilliams to death. *Id.* at 1797.

The Supreme Court overturned McWilliams's death sentence, holding that because McWilliams was indigent and his sanity at the time of his offenses was both relevant to the punishment he might suffer and "'seriously in question,'" *Ake* required the trial court to appoint an expert to help defense counsel review the report and records. *Id.* at 1798-99 (quoting *Ake*, 470 U.S. at 70). The Court explained that while *Ake*'s examination requirement was satisfied by the appointment of an expert to evaluate McWilliams's mental

state, *Ake*'s remaining requirements — that a defendant receive the assistance of an expert who is sufficiently available to "'assist in evaluation, preparation, and presentation of the defense'" — were not satisfied because the trial court denied counsel's request for an expert to evaluate the neuropsychologist's report and McWilliams's medical records "and translate these data into a legal strategy." *Id.* at 1800 (quoting *Ake*, 470 U.S. at 83). Thus, the Court concluded that McWilliams was deprived of his right to an appointed expert for his capital sentencing hearing. *Id.*

2. Illinois's statutory requirement

Considering the Illinois Constitution, this Court has explained that the state constitution provides a right commensurate with the federal right first recognized in Ake. *Lawson*, 163 Ill. 2d at 221-22. But a defendant may also seek the appointment of an expert by a separate, statutory path. By statute, if a defendant gives notice that he may rely upon the defense of insanity, the "[c]ourt shall, on motion of the State, order the defendant to submit to examination by at least one clinical psychologist or psychiatrist, to be named by the prosecuting attorney." 725 ILCS 5/115-6. At the prosecution's request, the court must also order "an examination by one neurologist, one clinical psychologist and one electroencephalographer." *Id.* All resulting reports must then be provided to the defense. *Id.* A court may order "additional examinations by additional experts" if they "will be of substantial value in the determination of issues of insanity." *Id.* Contrary to defendant's

assertion, *see* Def. Br. 35, the statute does not prohibit either party from asking the trial court to appoint additional experts or preclude the court from appointing additional experts where necessary, 725 ILCS 5/115-6.

B. The appointment of Witherspoon protected defendant's constitutional right to access an expert.

The trial court did not abuse its discretion when it declined to appoint a second expert to evaluate defendant because the appointment of Witherspoon satisfied his constitutional right.

A defendant's constitutional right is limited to *access* to an expert. *See McWilliams*, 137 S. Ct. at 1793 (quoting *Ake*, 470 U.S. at 83) ("'the State must provide an indigent defendant with access to a mental health expert.'"). Defendant had access to Witherspoon, a mental health expert who examined defendant to assess his sanity at the time of the offense and was sufficiently available to assist in the evaluation, preparation, and presentation of any viable insanity defense. The trial court appointed Witherspoon for the purpose of examining defendant's sanity at the time of the offenses; Witherspoon conducted that examination; and the record is replete with examples of defense counsel's ability to contact and interact with Witherspoon. *See* R28 (describing a "lengthy conversation" with Witherspoon about records needed for an addendum to the expert's report); R33 (counsel received "responses" about the report from Witherspoon); R65 (describing a conversation with Witherspoon about the handwritten note); R66 (suggesting counsel is able to contact Witherspoon for further information); R157

(suggesting counsel may call Witherspoon as a witness). Notably, unlike in *McWilliams*, 137 S. Ct at 1801, defense counsel never suggested that he needed a second expert to understand Witherspoon's report or defendant's medical records. And the fact that Witherspoon opined that defendant was sane at the time of the offenses did not mean that defendant was denied access to the constitutionally required mental health expert; in fact, *Ake* foresaw such circumstances, noting that a primary role of such experts was "to help determine whether the insanity defense is viable." *Ake*, 470 U.S. at 82. In other words, an expert (here, Witherspoon) was required to help defendant determine *whether* an insanity defense was viable, and not to ensure it was. Accordingly, defendant's constitutional rights were satisfied by the appointment of Witherspoon.

Defendant's argument that Witherspoon could not assist the defense rests on the incorrect assumption that he is entitled to the appointment of an expert who would render an opinion beneficial to his defense. *See* Def. Br. 33 (arguing that Witherspoon could not help the defense because his opinion that defendant was sane undermined his argument that he was not). A criminal defendant is not entitled to an expert of his choosing. *See Ake,* 470 U.S. at 83. Nor does the constitution require the State to "purchase for an indigent defendant all the assistance that his wealthier counterpart might buy." *Id.* at 77.

It follows that a defendant does not have a constitutional right to the appointment of experts until he obtains the diagnosis or opinion of his choosing. *See Lundgren v. Mitchell*, 440 F.3d 754, 772 n.5 (6th Cir. 2006) (citing *Ake*, 470 U.S. at 83) (criminal defendant "does not have a constitutional right to an expert whose conclusions favor [him]").

Indeed, defendant's position leads to absurd results. Defendant's understanding of *Ake* would require the serial appointment of additional experts, *ad infinitum*, until a favorable opinion could be found. Still more peculiar, if a defendant was indisputably sane at the time of the offense — such that no expert would opine he was insane — then *Ake* would never be satisfied because no expert could possibly be appointed to help the defense in the manner defendant envisions. Neither the federal nor state constitution contemplates such an absurd result.

Contrary to defendant's suggestion, Def. Br. 38, holding that he was not entitled to a second expert in these circumstances does not foreclose a defendant from ever receiving a second appointed expert. To obtain an additional expert, the defendant must show that one is necessary. *See Lawson*, 163 Ill. 2d at 221. For example, if the original appointed expert were unable to render an opinion on the relevant issue, or were disqualified for some reason, then another expert might be necessary. But here, Witherspoon's note that defendant's case was "borderline," SC22, is insufficient to show that another expert was necessary. Witherspoon

expressed no doubt as to his opinion that defendant was sane at the time of the offense, SC10, 19; nor did he suggest in his report that another expert was necessary, R69-70. Indeed, defense counsel stated on the record that he would seek a firmer recommendation from Witherspoon as to whether a second expert should evaluate defendant, but he was apparently unable to secure such a recommendation. *See* R71. In sum, Witherspoon's note amounts to nothing more than an informal acknowledgment that another expert might form a different opinion, but that recognition does not render a second expert necessary, *see Lawson*, 163 Ill. 2d at 221, or render the appointment of Witherspoon constitutionally insufficient under *Ake* and *McWilliams*. Consequently, the trial court did not abuse its discretion in declining to appoint a second expert.

C. The appellate court applied the proper standards in rejecting defendant's constitutional claim.

The appellate court correctly applied the *Ake* standard to defendant's claim that he was denied his constitutional right to the appointment of an expert. A12-13. Defendant argues that the appellate court erred in alternatively considering 725 ILCS 5/115-6 to determine whether the trial court properly denied his motion for an expert because, he argues,[2] the statute does not apply to defendants. Def. Br. 34-38. But the appellate

[2] The State disagrees with defendant's position that a defendant may not request an appointed expert pursuant to section 115-6. *See supra* Section II.A.2. However, this Court need not resolve the issue because defendant has waived any claim to relief under the statute. *See infra* at 36.

court's choice to separately analyze both whether the trial court's decision complied with the statute *and* constitutional requirements, A12-14, does not provide a basis on which to grant defendant relief.

This Court reviews the trial court's judgment for an abuse of discretion, and may affirm on any basis supported by the law and the record, regardless of the arguments that defendant may have raised in the appellate court, or how the appellate court chose to evaluate the claims. *See Dillon v. Evanston Hosp.*, 199 Ill. 2d 483, 491 (2002). For the reasons described in Section II.B, *supra*, the trial court did not abuse its discretion in denying defendant's motion because the constitution did not require the appointment of a second expert.

Moreover, as defendant argues that the statute does not apply to him at all, such that the appellate court was wrong to consider whether the trial court's decision complied with it, Def. Br. 36, defendant has waived (or at the very least forfeited) any argument that he had a statutory right to the appointment of a second expert. *See Vancura v. Katris*, 238 Ill. 2d 352, 369 (2010); *see also* Ill. S. Ct. R. 341(h).

Finally, this court also need not address defendant's argument that section 115-6 violates due process by allowing the State to request more experts than a defendant may request. *See* Def. Br. 36-37. Defendant was not affected by the statute because he did not seek an additional expert under the statute, Def. Br. 36, and the State did not seek a second examination by

an additional expert in this case. Thus, petitioner has no standing to challenge the statute and consideration of this issue would render an impermissible advisory opinion. *People v. Terrell*, 132 Ill. 2d 178, 212 (1989) ("A person lacks standing to challenge the constitutionality of a statute unless he is directly affected by the alleged unconstitutionality")

In sum, this Court need not consider whether the appellate court's application of a statute that defendant claims does not apply to him was correct. *See People v. Bass*, 2021 IL 125434, ¶ 29 ("Courts of review will not decide moot or abstract questions, will not review cases merely to establish precedent, and will not render advisory opinions.").

CONCLUSION

This Court should affirm the appellate court's judgment.

January 23, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages.

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CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct. On January 23, 2023, the foregoing Brief of the Plaintiff-Appellee 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 e-mail addresses:

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