No. 128123

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff -Appellee,<br><br>v.<br><br>ANDREW RAMIREZ,<br><br>Defendant-Appellant. | ) Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-1392<br>)<br>) There on Appeal from the Circuit Court of Cook County, Illinois, No. 18 CR 7591<br>)<br>) The Honorable Timothy J. Joyce, Judge Presiding |

# BRIEF OF PLAINTIFF-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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## NATURE OF THE CASE

Following a bench trial in the Circuit Court of Cook County, defendant was convicted of knowingly possessing a defaced firearm in violation of 720 ILCS 5/24-5(b), R103, and sentenced to a two-year term of probation, C46.[1] Defendant appeals the appellate court's judgment affirming that conviction. No issue is raised on the pleadings.

## ISSUES PRESENTED FOR REVIEW

1. Whether the evidence was sufficient to prove that defendant knowingly possessed a defaced firearm in violation of section 24-5(b) because the evidence showed that (1) he knowingly possessed the firearm, and (2) the firearm was defaced.

2. Whether, if section 24-5(b) also requires proof that defendant knew that the firearm was defaced, the evidence was sufficient to prove that defendant knowingly possessed a defaced firearm in violation of section 24-5(b).

3. Whether, if section 24-5(b) also requires proof that defendant knew that the firearm was defaced, and the evidence on that element was insufficient, the proper remedy is remand for a new trial at which the People may present evidence on the newly recognized element of the offense.

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[1] Citations to the common law record appear as "C__," to the report of proceedings as "R__," to the supplemental common law record as "Sup. C__," to the People's trial exhibits as "Exh. __," and to defendant's opening brief as "Def. Br.__."



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4. Whether section 24-5(b) comports with the Second Amendment.

## JURISDICTION

On April 26, 2022, this Court allowed defendant's petition for leave to appeal. Accordingly, jurisdiction lies under Supreme Court Rule 315 and 612(b).

## STATUTE INVOLVED

**720 ILCS 5/24-5. Defacing identification marks of firearms.**

(a) Any person who shall knowingly or intentionally change, alter, remove or obliterate the name of the importer's or manufacturer's serial number of any firearm commits a Class 2 felony.

(b) A person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony.

(c) Nothing in this Section shall prevent a person from making repairs, replacement of parts, or other changes to a firearm if those repairs, replacement of parts, or changes cause the removal of the name of the maker, model, or other marks of identification other than the serial number on the firearm's frame or receiver.

(d) A prosecution for a violation of this Section may be commenced within 6 years after the commission of the offense.

## STATEMENT OF FACTS

Chicago Police obtained a search warrant to search defendant's house for evidence relating to the weighing, cutting, bagging, or mixing of illegal drugs. Sup. C3. According to the complaint for the warrant, a confidential informant had reported buying cannabis from defendant at defendant's home three times a week for approximately six months, and most recently on May



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9, 2018. Sup. C5-6. On May 10, 2018, police executed the search warrant at defendant's home and recovered a 20-gauge Benelli shotgun, a Mossberg shotgun, a 9-mm handgun, ammunition, and what they suspected was cannabis. R31-32, 55-57, 76-77; Exh. 1 at T03:37:45Z-T03:40:11Z, T03:40:59Z-T03:50:15Z.

Defendant was charged with possession of a defaced firearm in violation of 720 ILCS 5/24-5(b) for knowingly possessing the Benelli shotgun, on which the serial number had been changed, altered, removed, or obliterated. C12. The case proceeded to a bench trial, R27-29, where three of the officers involved in the search testified, R33-88; two of the officers' body camera recordings were entered into evidence, R88; Exhs. 1 & 6;[2] and defendant stipulated that the serial number on the Benelli shotgun had been changed, altered, removed, or obliterated, R88.

The evidence at trial showed that police executed the search warrant at the two-bedroom Chicago home where defendant lived with his mother. R33-34. When police entered the home, they saw defendant's mother at the foot of the stairs to the second floor. R36, 43, 50. Police then encountered defendant as he was descending the stairs from the second floor, R36-37, 52-53, where there were two bedrooms, one to the left and another to the right,

[2] The body camera footage contained in People's Exhibit 1 appears in the file named "AXON_Body_2_Video_2018-05-10_2233," and the footage contained in People's Exhibit 6 appears in the file named "AXON_Body_2_Video_2018_05-10_2233(9)."



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R38-39, 51. Police detained defendant, then allowed him to retrieve his shoes from the bedroom on the left. R38-39, 40-41, 51. That bedroom was furnished with a set of children's bunk beds and a single bed. R54-55; *see* Exh. 2 (photograph of bedroom). Defendant retrieved his shoes from the foot of the single bed. R41. The police did not find anyone else in the house. R40.

After police searched the house and recovered a handgun and a shotgun, defendant told police that there was a second shotgun upstairs. Exh. 6 at T03:39:02Z-T03:39:25Z; T03:42:56Z-T03:43:39Z. Police then recovered a Benelli shotgun from beneath the mattress of the single bed in the left-hand bedroom. Exh. 6 at T03:48:10Z-T03:48:33Z; R55-57, 76-77; *see* Exh. 3 (photograph of shotgun under mattress). Officers also found mail from the Department of Human Services addressed to defendant on a television stand a few feet from the single bed, R79-83; Exh. 6 & 7, and men's clothing in the bedroom closet, R58-59, 79-80; *see* Exhs. 4 & 5 (photographs of closet).

One of the officers who executed the warrant, Officer Bolanos, testified that there was no serial number on the Benelli shotgun; the serial number had been "scratched off." R57-58. In Bolanos's bodycam video, he is heard commenting "this one's defaced" shortly after picking up the shotgun, Exh. 6 at T03:51:24Z-T03:51:35Z, and a large scratch mark is visible on the shotgun near the trigger, *id.* at T03:50:57Z; T03:51:00Z- T03:51:04Z; T03:51:28Z-T03:51:32Z.



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Police arrested defendant and took him to the police station, where he waived his *Miranda* rights and consented to an interview. R60-61. Defendant said that he had purchased the Benelli shotgun from a coworker for a hundred dollars and lunch. R61.

The Benelli shotgun recovered during the search was not introduced at trial, but the parties stipulated that the serial number on the shotgun "had been changed, altered, removed, or obliterated." R88. Defendant did not testify or call any witnesses. R89.

The trial court found defendant guilty. R103. The court credited the officers' testimony, which it noted was corroborated "in virtually every regard" by the body camera footage. *Id.* Following *People v. Lee*, 2018 IL App (1st) 162563, the trial court held that knowledge that the shotgun was defaced was not an element of the offense. R103. Defendant moved for a new trial, arguing that the People failed to prove that he knowingly possessed the defaced shotgun because the evidence did not establish that he lived in the house or knew that the defaced shotgun was under the mattress. R119-124. The trial court denied the motion and sentenced defendant to two years of probation. R125, 136. The appellate court affirmed, holding that the evidence was sufficient to prove defendant's guilt and that knowledge that the shotgun was defaced is not an element of the offense under section 24-5(b). *People v. Ramirez*, 2021 IL App (1st) 191392-U, ¶¶ 19-20, 23, 28.



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## STANDARDS OF REVIEW

The question of what elements comprise an offense under 720 ILCS 5/24-5(b) is a question of statutory interpretation that this Court reviews de novo. *People v. Ward*, 215 Ill. 2d 317, 324 (2005).

This Court reviews the sufficiency of the evidence to 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 double.'" *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. at 319).

The Court reviews the constitutionality of section 24-5(b) under the Second Amendment de novo. *People v. Aguilar*, 2013 IL 112116, ¶ 15.

## ARGUMENT

### I. The Evidence Was Sufficient to Prove Defendant Guilty of Possessing a Defaced Firearm in Violation of 720 ILCS 5/24-5(b).

"When a defendant challenges the sufficiency of the evidence, a reviewing court 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." *People v. Jackson*, 2020 IL 124112, ¶ 64; *Jackson v. Virginia*, 443 U.S. at 319. "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier



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of fact," *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006), and "[o]nce a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review all of the evidence is to be considered in the light most favorable to the prosecution," *Jackson*, 443 U.S. at 319 (emphasis in original).

But to determine whether the evidence was sufficient to prove all of the elements of an offense under section 24-5(b), the Court first must identify those elements, which requires construing the statute. When the plain language of section 24-5(b)'s prohibition against the possession of a defaced firearm is construed in light of the legislature's purpose in prohibiting such possession, it is clear that the elements of the offense are (1) knowing possession of a firearm and (2) a firearm that has been defaced; knowledge of the firearm's defacement is not an element of the offense. Accordingly, the evidence here was sufficient because it showed that (1) defendant knowingly possessed the shotgun that he bought and hid under his mattress and (2) that the shotgun was defaced. But the evidence would have been sufficient even if knowledge of defacement were an element, for defendant's knowledge could be reasonably inferred from the body camera footage admitted at trial, which showed that the shotgun was clearly and obviously defaced.



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### A. The elements of an offense under section 24-5(b) are (1) knowing possession of a firearm and (2) a defaced firearm; knowledge of the firearm's defacement is not an element of the offense.

This Court's "primary objective in construing a statute is to ascertain and give effect to the intent of the legislature." *People v. Boyce*, 2015 IL 117108, ¶ 15. "The most reliable indicator of legislative intent is the language of the statute, given its plain and ordinary meaning," which the Court construes in light of "the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another." *Id.* When the plain language of section 24-5(b)'s prohibition against the possession of defaced firearms is construed in light of the legislature's purpose in prohibiting such possession, it is clear that the elements of the offense are (1) knowing possession of a firearm and (2) a defaced firearm; the General Assembly did not intend that knowledge of the firearm's defacement be an element of the offense.

The General Assembly's purpose in enacting section 24-5 was to protect the public from the dangers posed by firearms that have been "defaced," meaning that their serial number was "changed, altered, removed or obliterated." *See People v. Stanley*, 397 Ill. App. 3d 598, 608 (1st Dist. 2009) (section 24-5 reflects "the legislature's recognition of the dangerousness posed by defaced weapons"). Such firearms pose a significant danger to the public because they are untraceable. "Firearms without serial numbers are of particular value to those engaged in illicit activity because the absence of

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serial numbers helps shield recovered firearms and their possessors from identification." *United States v. Marzzarella*, 614 F.3d 85, 98 (3d Cir. 2010). "It is no secret that a chain of custody for a firearm greatly assists in the difficult process of solving crimes," for "[w]hen a firearm is stolen, determining this chain is difficult and when serial numbers are obliterated, it is virtually impossible." *United States v. Schnell*, 982 F.2d 216, 220 (7th Cir. 1992). The "prevalence" of firearms without serial numbers, "therefore, makes it more difficult for law enforcement to gather information on firearms recovered in crimes." *Marzzarella*, 614 F.3d at 98; *see also Fact Sheet — National Tracing Center*, U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, https://www.atf.gov/resource-center/fact-sheet/fact-sheet-national-tracing-center (last visited Nov. 30, 2022) ("Tracing can also help detect domestic and international trafficking patterns, and identify local trends in the sources and types of crime guns."). If defaced firearms were allowed to circulate freely, criminals could more easily evade detection, and so "preserving the ability of law enforcement to conduct serial number tracing — effectuated by limiting the availability of untraceable firearms — constitutes a substantial or important interest." *Marzzarella*, 614 F.3d at 98.

The first measure enacted by the General Assembly to address the danger posed by defaced firearms was directed at deterring the creation of such firearms. Section 24-5 originally provided that "[a]ny person who shall change, alter, remove or obliterate the name of the maker, model,



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manufacturer's number or other mark of identification of any firearm shall be fined not to exceed $500 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or both." Ill. Rev. Stat. 1961, ch. 38, par. 24-5(a). And the section further stated that "[p]ossession of any firearm upon which any such mark shall have been changed, altered, removed or obliterated shall be prima facie evidence that the possessor has changed, altered, removed or obliterated the same." Ill. Rev. Stat. 1961, ch. 38, par. 24-5(b). Then, in 1995, the General Assembly amended section 24-5 to add an offense of creating a defaced firearm punishable as a Class 2 felony and included a culpable mental state, providing that "[a]ny person who shall knowingly or intentionally change, alter, remove or obliterate the name of the maker, model, manufacturer's number or other mark of identification of any firearm commits a Class 2 felony." 720 ILCS 5/24-5(a) (eff. Jan. 1, 1995). At the same time, however, the General Assembly retained the provision specifying that possession of a defaced firearm created a mandatory rebuttable presumption that the possessor had created the defaced firearm; possession of a defaced firearm was still not a separate offense. *See* 720 ILCS 5/24-5(b) (1995).

In 2004, the General Assembly changed its approach toward defaced firearms. Section 24-5(a) continued to prohibit knowingly or intentionally defacing a firearm, *see* 720 ILCS 5/24-5(b) (2004), but the General Assembly amended 24-5(b) so that possession of a defaced firearm no longer served as



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the basis for a presumption that the defendant created the defaced firearm and instead possession of a defaced firearm became a separate offense altogether.[3] Under the new section 24-5(b), "[a]ny person who possesses any firearm upon which any such importer's or manufacturer's serial number has been changed, altered, removed or obliterated commits a Class 3 felony." 720 ILCS 5/24-5(b) (eff. Aug. 11, 2004). Thus, the General Assembly expanded its efforts to curb the risks associated with defaced firearms: section 24-5(a) continued to prohibit creating such firearms, and section 24-5(b) prohibited possessing such firearms, thereby increasing the likelihood that they will be removed from circulation.

By its plain language, then, section 24-5(b) creates an offense with two elements: (1) knowing possession of a firearm and (2) that the firearm's serial number has been changed, altered, removed, or obliterated. Although the General Assembly did not include a separate term identifying the applicable mental state, section 24-5(b) does not create an offense imposing absolute liability because the first element of the offense — the act of possessing a firearm — by definition must be committed knowingly. *See* 720 ILCS 5/4-2 (defining possession as "a voluntary act if the offender *knowingly*

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[3] Although defendant asserts that "the impetus for the revision" was *People v. Quinones*, 362 Ill. App. 3d 385 (1st Dist. 2005), Def. Br. 13, which held unconstitutional the mandatory rebuttable presumption under the prior version of section 24-5, *Quinones*, 362 Ill. App. 3d at 395, the General Assembly amended section 24-5 on August 11, 2004, more than a year before *Quinones* was decided, *see* P.A. 93-0906 (eff. Aug. 11, 2004).



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procured or received the thing possessed, or was aware of his control thereof for a sufficient time to have been able to terminate his possession.") (emphasis added). Thus, the question is whether the General Assembly intended that an offender not only know that he possesses a firearm, but also know that the firearm is defaced. Application of settled principles of statutory construction demonstrate that the General Assembly did not intend that the offender know the firearm is defaced.

First, the plain language of section 24-5(b), read in the context of section 24-5, shows that the General Assembly did not intend that knowledge of defacement be an element of the offense. Unlike section 24-5(a), where the General Assembly specified that the prohibited act of defacement must be committed knowingly or intentionally, 720 ILCS 5/24-5(a), the General Assembly provided no mental state in section 24-5(b) beyond the mental state inherent in the act of possession, *see* 720 ILCS 5/24-5(b). The General Assembly's provision of an explicit mental state in one subsection of the statute and omission of such mental state from another subsection is evidence that the omission was deliberate. *See People v. Molnar*, 222 Ill. 2d 495, 521 (2006) ("[W]e must presume that, by specifically including a culpable mental state within the same statutory section, the legislature's omission of a culpable mental state [elsewhere in the section] indicates that different results were intended."); *People v. Grever*, 353 Ill. App. 3d 736, 758-759 (2d Dist. 2004) ("'[A]n express statutory requirement here, contrasted with



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statutory silence there, shows an intent to confine the requirement to the specified instance.'" (quoting *Field v. Mans*, 516 U.S. 59, 67 (1995)).

Second, section 24-5(a) and section 24-5(b) create different offenses with different penalties, which is further evidence that the General Assembly did not intend that knowledge of defacement be an element of an offense under section 24-5(b). As noted, section 24-5 addresses the danger of untraceable firearms in two ways. First, section 24-5(a) targets creating such firearms by criminalizing knowing and intentional defacement of a firearm as a Class 2 felony. Second, section 24-5(b) seeks to remove existing defaced firearms from circulation by criminalizing their possession as a Class 3 felony. That section 24-5(a) expressly requires a more culpable mental state and imposes a greater penalty because it targets dangerous conduct is further evidence that the General Assembly did not intend that section 24-5(b), which imposes a lesser penalty and targets the possession of defaced firearms, a less serious offense, require knowledge of the defacement. *See People v. Artis*, 232 Ill. 2d 156, 170-71 (2009) (provision of more culpable mental state reflects legislative determination that offense is more serious offense); *see also In re Samantha V.*, 234 Ill. 2d 359, 379 (2009) ("[C]ommon sense dictates that the legislature would prescribe greater punishment for the offense it deems more serious.").

Third, the General Assembly's intent that knowledge of defacement not be an element of the offense under section 24-5(b) is further apparent



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when the section is viewed in the context of other possessory offenses. For example, when the General Assembly prohibited the possession of stolen firearms, it provided that "[a] person commits possession of a stolen firearm when he or she, not being entitled to the possession of a firearm, possesses the firearm, *knowing it to have been stolen or converted*." 720 ILCS 5/24-3.8 (emphasis added). Similarly, when the General Assembly prohibited the possession of a vehicle with a defaced vehicle identification number, it provided that it is a Class 2 felony to "possess . . . a vehicle . . . *with knowledge* that the identification number of the vehicle . . . has been removed or falsified." 625 ILCS 5/4-103(a)(4) (emphasis added). If the legislature had intended that knowledge that a firearm is defaced be an element of the offense, it would have said so, as it has in other statutes.

Indeed, when the General Assembly amended section 24-5(b) to create the offense of possessing a defaced firearm, it did so with the knowledge that courts had consistently interpreted the prohibition in 720 ILSC 5/24-1(a)(7) against possessing a sawed-off shotgun as requiring proof that the defendant possessed a sawed-off shotgun, not that the defendant knew the shotgun barrel was sawed off. *See Fink v. Ryan*, 174 Ill. 2d 302, 308 (1996) ("Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law.") (internal quotations omitted); *State v. Mikusch*, 138 Ill. 2d 242, 247-248 (1990) ("It is presumed that the legislature, in enacting various statutes, acts



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rationally and with full knowledge of all previous enactments."). Under that prohibition, "'[a] person commits the offense of unlawful use of weapons when he knowingly . . . possesses . . . any shotgun having one or more barrels less than 18 inches in length, sometimes called a sawed-off shotgun.'" *People v. Ivy*, 133 Ill. App. 3d 647, 652 (5th Dist. 1985) (quoting Ill. Rev. Stat. 1981, ch. 38, par. 24-1(a)(7)).[4] In *People v. Ivy*, the appellate court reasoned that, "because of the inherently dangerous nature of sawed-off shotguns and their illegal status *per se*," it was the shotgun itself that was "the subject of the legislative enactment," not the offender's intent in possessing it. *Id.* at 653. Accordingly, the court held, it would be contrary to the General Assembly's intent for "the unlawfulness of the defendant's possession" to "depend upon her familiarity or lack of familiarity with the characteristics of the gun she possessed." *Id.* at 653; *see also People v. Wright*, 140 Ill. App. 3d 576, 582 (1st Dist. 1986) (similar). Thus, the analogous provision prohibiting the possession of sawed-off shotguns is additional evidence that the General Assembly would not have intended that courts interpret section 24-5(b) to require knowledge of the defacement.

[4] Section 24-1(a)(7)'s prohibition against possessing sawed-off shotguns was substantially the same in 2004, when the General Assembly amended section 24-5(b) to prohibit possessing defaced firearms. *See* 720 ILCS 5/24-1(a)(7)(ii) (2004) ("A person commits offense of unlawful use of weapons when he knowingly . . . possesses . . . a shotgun having one or more barrels less than 18 inches in length[.]").



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Fourth and finally, the General Assembly's assumption that courts would construe section 24-5(b) as intended — with the focus on the prohibited nature of the firearm — proved correct. The appellate court has consistently read section 24-5(b) as requiring knowing possession of the firearm, not knowledge of the firearm's defacement. *See People v. Lee,* 2019 IL App (1st) 162563, ¶ 43; *People v. Falco*, 2014 IL App (1st) 111797, ¶ 18; *People v. Stanley*, 397 Ill. App. 3d 598, 608-09 (1st Dist. 2009). That this reading is the reading that the General Assembly intended is confirmed by the fact that the General Assembly has not amended section 24-5(b) since enacting it in 2004.[5] "When the legislature chooses not to amend a statute following judicial construction, it is presumed that the legislature has acquiesced in the court's construction of the statute and the declaration of legislative intent." *People v. Johnson*, 2019 IL 123318, ¶ 14; *see Bd. of Educ. v. Moore*, 2021 IL 125785, ¶ 30 ("[W]here the legislature chooses not to amend terms of a statute after judicial construction, it will be presumed that it has acquiesced in the court's statement of legislative intent."); *see also Pam v. Holocker*, 2018 IL 123152, ¶ 31 (legislative acquiescence to interpretation adopted in two appellate court

[5] When the General Assembly revisited the subject of defaced firearms, it declined to amend section 24-5(b) to reject the appellate court's established construction of the provision; in May 2022, the General Assembly enacted 720 ILCS 5/24-5.1, a closely-related provision requiring serialization of unfinished "frames or receivers" (*i.e.*, firearm parts) and prohibiting possession of unserialized frames or receivers, but did not amend section 24-5(b).



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decisions demonstrated by inaction through subsequent amendments); *Moon v. Rhode*, 2016 IL 119572, ¶¶ 31-33 (legislative acquiescence to interpretation adopted in appellate court decisions demonstrated by inaction through subsequent amendments, despite one appellate court decision adopting contrary interpretation).

Because the plain language, statutory context, and history of section 24-5(b) all reveal the General Assembly's intent that knowledge of a firearm's defacement not be an element of the offense, defendant's reliance on the presumption that all elements be subject to a mental state is misplaced. *See* Def. Br. 14-15. Whether a criminal statute requires a particular mental state is first and foremost a question of legislative intent. *See People v. O'Brien*, 197 Ill. 2d 88, 92 (2001); *accord Rehaif v. United States*, 139 S. Ct. 2191, 2195 (2019) (whether criminal statute require mental state "is a question of congressional intent"); *Liparota v. United States*, 471 U.S. 419, 424 (1985) ("The definition of the elements of a criminal offense is entrusted to the legislature[.]"). Although there is a presumption, or "interpretative maxim," *Rehaif*, 139 S. Ct. at 2195, which has been codified in 720 ILCS 5/4-9, that every element of an offense has a corresponding mental state, before "assigning a level of culpability to each element," the Court "obviously must follow [the General Assembly's] intent as to the required level of mental culpability for any particular offense," *United States v. Bailey*, 444 U.S. 394, 406 (1980); *see also Liparota*, 471 U.S. at 424-25 (where statute "has not



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explicitly spelled out the mental state required," Court applies presumption that elements are subject to some mental state only if "the legislative history of the statute contains nothing that would clarify the [legislative] purpose on this point"); *O'Brien*, 197 Ill. 2d at 91-92 (noting that presumption contained in section 5/4-9 applies only "absent either a clear indication that the legislature intended to impose absolute liability or an important public policy favoring it"). Accordingly, because the plain language of section 24-5(b), read in its statutory context and in light of its history and purpose, demonstrates the General Assembly's intent that knowledge of defacement not be an element of the offense, the presumption does not apply.

In any event, section 24-5(b)'s prohibition against possession of defaced firearms by its nature falls within a well-established exception to the general presumption that every element of an offense has a mental state. Although "'the existence of a *mens rea* is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence,'" *Staples v. United States,* 511 U.S. 600, 605 (1994) (quoting *United States v. United States Gypsum Co.*, 438 U.S. 422, 436-37 (1978)), one of the exceptions to that rule is the "'a now familiar type of legislation whereby penalties serve as effective means of regulation.'" *Morissette v. United States,* 342 U.S. 246, 259-60 (1952) (quoting *United States v. Dotterweich,* 320 U.S. 277, 280-81 (1943)); *see Molnar*, 222 Ill. 2d at 522-23 (recognizing distinction between "'a traditional criminal statute aimed primarily at punishing wrongdoing'" and "'a



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regulatory statute'" (quoting *People v. Patterson*, 185 Misc. 2d 519, 530-31 (N.Y. Crim. Ct. 2000)). "'In the interest of the larger good,'" such statutes "'put[ ] the burden of acting at hazard upon a person otherwise innocent but standing in a responsible relation to a public danger.'" *Morissette*, 342 U.S. at 260 (quoting *Dotterweich,* 320 U.S. at 281).

Here, the General Assembly enacted section 24-5(b) to target defaced firearms because they are uniquely suited to the evasion of detection. *See Stanley*, 397 Ill. App. 3d at 608; *see also United State v. Dorsey*, 591 F.2d 922, 937 n.19 (D.C. Cir. 1978) (noting that "normal presumption in favor of scienter is abandoned 'when the purpose of the statute is to regulate objects . . . which in and of themselves are dangerous or harmful'" (quoting *United States v. Ruisi*, 460 F.2d 153, 156 (2d Cir. 1972)); *cf. Ivy*, 133 Ill. App. 3d at 653 (possession of sawed-off shotguns prohibited "because of the inherently dangerous nature of sawed-off shotguns and their illegal status *per se*"). And because defaced firearms pose a particular danger to society, the General Assembly chose to place the onus on people who possess firearms to ensure that their firearms are not defaced. *Cf. People v. Brown*, 98 Ill. 2d 374, 380 (1983) (statute prohibiting possession of vehicle with falsified or removed vehicle identification number "placed the burden of determining the authenticity of the VIN on possessors as well as owners and sellers"); *United States v. Carter*, 421 F.3d 909, 915 (9th Cir. 2005) ("By prescribing enhanced sentences for possessors for firearms with 'altered or obliterated serial



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numbers,' [federal sentencing guideline] encourages those who deal in firearms to inspect such weapons and to refuse to handle those with defaced serial numbers." (quoting 18 U.S.S.G. § 2K2.1(b)(4)).

Defendant relies on *People v. Gean*, 143 Ill. 2d 281 (1991), to argue that knowledge of a firearm's defacement must be an element of the offense because otherwise section 24-5(b) will not differentiate between "innocent" and "criminal" conduct. Def. Br. 24-25. But *Gean* is readily distinguished, for it concerned the possession of contraband that was not necessarily dangerous (or even necessarily contraband). *Gean* considered a statute directed at preventing "chop shops" by imposing felony liability for possessing a vehicle's certificate of title without complete assignment. 143 Ill. 2d at 283-84, 289. However, as this Court subsequently explained in *People v. Tolliver*, 147 Ill. 2d 392 (1992), possession of an incomplete title — and even knowing possession of such title — frequently is entirely innocent and wholly unrelated to car theft, as it may occur, for example, when title is transferred between a buyer and seller who are not in the same location. *Id.* at 401-02. Accordingly, the Court held, the statute at issue in *Gean* is properly interpreted to require that a person possess an incomplete title with criminal intent because mere possession is not inherently related to the harm that the General Assembly sought to prevent. *Id.* at 402. By contrast, and contrary to defendant's suggestion, possession of a defaced firearm is never "innocent" because a defaced firearm, unlike an incomplete title, is dangerous regardless



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of whether the possessor knows that it is defaced. The General Assembly therefore could reasonably place the burden on a person taking possession of a firearm to guard against the possibility that the firearm is defaced.

In addition, unlike a firearm that is unlawful because of a characteristic not necessarily visible to the naked eye, *see Staples*, 511 U.S. at 615, a defaced firearm's unlawful characteristic is readily apparent. As a result, the process of acquiring a defaced firearm generally will not fall within "the common experience that owning a gun is usually licit and blameless conduct." *Staples*, 511 U.S. at 613. For example, here defendant did not obtain a FOID card, then purchase his guns through a licensed gun dealer. Instead, he purchased his defaced shotgun from a coworker in exchange for one hundred dollars and lunch, which provided little reason to assume the shotgun's legality and ample reason for caution. R61. Moreover, the defacement was obvious: Officer Bolanos' testimony and the body worn camera footage show that the gun was visibly scratched. R57-58; Exh. 6 at T03:50:57Z; T03:51:00Z- T03:51:04Z; T03:51:28Z-T03:51:32Z. Accordingly, the facts of this case confirm the reasonableness of the General Assembly's conclusion that a person may reasonably be required to examine a firearm that he obtains to ensure that it is not defaced.

Defendant notes that other States have enacted statutes prohibiting possession of defaced firearms and expressly require proof that the defendant know of the defacement, Def. Br. 31 (collecting statutes), but that simply



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demonstrates the many different ways in which the General Assembly could have communicated an intent to make knowledge of the defacement an element of the offense under section 24-5(b) had it wished to do so. Defendant also notes that some state courts have construed defacement statutes that do not expressly require knowledge of defacement to include that mental state, *see* Def. Br. 31 (collecting cases), but the fact that other state courts have construed the language in their statutes differently than Illinois courts have construed section 24-5(b) provides no insight into the General Assembly's intent in enacting section 24-5(b).

Defendant's citation to federal decisions that construe 18 U.S.C. § 922(k) as requiring knowledge of defacement provides even less support. *See* Def. Br. 31-32. Section 922(k) provides that "[i]t shall be unlawful for any person knowingly . . . to possess or receive any firearm which has had the importer's or manufacturer's serial number removed, obliterated, or altered[.]" 18 U.S.C. § 922(k). Courts initially construed section 922(k) as requiring only knowing possession, not knowledge of the defacement. *See United States v. Ouimette*, 753 F.2d 188, 193 (1st Cir. 1985) ("All the government had to prove [under section 922(k)] was that the defendant had knowing possession of the gun."); *Dorsey*, 591 F.2d at 937 n.19 (similar). But in 1986, Congress amended the federal statute to require that the offender have "knowingly violate[d]" section 922(k). *See United States v. Abernathy*, 83 F.3d 17, 19 n.1 (1st Cir. 1996). As a result, courts have since held that



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knowledge of the defacement is required, since a person could not knowingly violate section 922(k)'s prohibition against possessing a defaced firearm if one did not know that the firearm was defaced. *See*, *e.g.*, *id.* ("[A]ctual knowledge has been a necessary element of the crime at least since the passage of the Firearm Owners' Protection Act, which modified the attendant penalty provision to require *knowing* violation of [section] 922(k) in order for criminal sanctions to attach."); *United States v. Fennell*, 53 F.3d 1296, (D.C. Cir. 1995) (same); *United States v. Haynes*, 16 F.3d 29, 33-34 (2d Cir. 1994) (same); *United States v. Haywood*, 363 F.3d 200, 206 (3d Cir. 2004) (same). Accordingly, defendant's post-1986 cases construing section 922(k) are inapposite.

Defendant's reliance on *Rehaif v. United States*, 139 S. Ct. 2191, is similarly misplaced. *See* Def. Br. at 27. Like section 922(k), the statute in *Rehaif* made it unlawful to "knowingly violate[ ]" the prohibition against possessing a firearm while unlawfully in the United States. 139 S. Ct. at 2195. Because a person cannot "knowingly violate" a prohibition against possessing a firearm while unlawfully in the United States unless he knows that he is unlawfully in the country, *Rehaif* held that the mental state requirement applies to the element of legal status. *Id.* at 2196, 2198. By contrast, section 24-5(b) does not require proof of a "knowing violation" of its prohibition against possessing a defaced firearm — indeed, as defendant concedes, it does not explicitly require that *anything* be done knowingly, Def.



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Br. 13 — and so defendant's cases concerning construction of statutes prohibiting their knowing violation are inapposite.

Finally, defendant is incorrect in asserting that unless section 24-5(b) is construed as requiring knowledge of a firearm's defacement, the prosecution would be relieved of its burden of proving all elements of an offense beyond a reasonable doubt. *See* Def. Br. 23. If knowledge of defacement is not an element of the offense under section 24-5(b), then by definition it need not be proved to establish guilt. Defendant's argument to the contrary confuses the distinction between "elements" and "attendant circumstances." A variety of offenses have elements that must be proved beyond a reasonable doubt but that are considered attendant circumstances, meaning that they are facts that must be proved without regard to the defendant's mental state. *See People v. Douglas*, 381 Ill. App. 3d 1067, 1073 (2d Dist. 2008) ("[Attendant] circumstances do not require a mental state; they only need be established.").

For example, a person commits predatory sexual assault of a child if he "was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed." 720 ILCS 5/12-14.1(a)(1). Predatory criminal sexual assault therefore has three elements: "one voluntary-act element" — the act of sexual penetration — and "two 'attendant circumstances' elements" — the age of the offender and the age of the victim. *Douglas*, 381 Ill. App. 3d at 1073. With respect to the



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voluntary-act element, a defendant must be proved to have knowingly or intentionally committed an act of sexual penetration. *Id.* But with respect to the attendant circumstances elements, the prosecution must prove only that the defendant and the victim were of the requisite ages; the defendant "need have no mental state regarding the age of the victim." *Id.* Another example is the offense of leaving the scene of a vehicle crash resulting in injury or death; the "prosecution is required to prove only that the accused had knowledge that the vehicle he was driving was involved in an accident or collision," not "that the accused knew that injury or death resulted from the collision." *People v. Nunn*, 77 Ill. 2d 243, 252 (1979).

Similarly, here, the text, history, and purpose of section 24-5(b) all show that statute does not require proof that defendant had knowledge of the attendant circumstances element of defacement, only of the fact of defacement. Thus, defendant misunderstands the statement in *People v. Stanley* that defacement "is not an element of the offense." 397 Ill. App. 3d at 609. *Stanley* was simply invoking the distinction between a voluntary-act element and an attendant circumstances element, not the distinction between a fact that must be proved and a fact that need not be proved. Accordingly, the cases following *Stanley* recognize that it held only that section 24-5(b) does not require a showing that the defendant *knew* that the firearm was defaced; the prosecution still must prove that the firearm was defaced. *See Lee,* 2019 IL App (1st) 162563, ¶ 43 ("The State needed to prove



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beyond a reasonable doubt only that defendant knowingly possessed a firearm and that the firearm's identification number was defaced."); *Falco*, 2014 IL App (1st) 111797, ¶ 18 ("[T]he State is required to prove, beyond a reasonable doubt, that defendant intentionally or knowingly possessed a firearm upon which the serial number has been changed, altered, removed, or obliterated.").

### B. The evidence was sufficient to prove defendant guilty of possessing a defaced firearm because it proved that he knowingly possessed a firearm and that firearm was defaced.

When viewed in the light most favorable to the People and with all reasonable inferences drawn in the People's favor, *see Jackson*, 2020 IL 124112, ¶ 64, the evidence at trial was sufficient to prove defendant guilty of violating section 24-5(b) because it showed that he knowingly possessed the Benelli shotgun and that the shotgun was defaced, meaning that its serial number had been changed, altered, removed, or obliterated. Defendant's knowing possession of the shotgun was established by his admission that he had purchased it, R61, and the evidence that it was hidden under his mattress: the mattress was in a bedroom containing a closet full of men's clothing, R58-59, defendant's shoes, R40-41, and mail addressed to defendant, R81-83. And the parties stipulated that the shotgun recovered from defendant's bedroom had a defaced serial number. R88. Accordingly, the evidence was sufficient to prove that defendant possessed a defaced firearm in violation of section 24-5(b).



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### C. The evidence was sufficient to prove defendant guilty of possessing a defaced firearm even if knowledge of defacement were an element of the offense.

Even if knowledge of the firearm's defacement were an element of the offense under section 24-5(b), the evidence was sufficient for a rational trier of fact to find defendant guilty. As explained, the evidence established that defendant possessed the Benelli shotgun and that it was defaced. *See supra* § I.B. And defendant's knowledge of the shotgun's defacement can be inferred from evidence that the defacement was open and obvious. Officer Bolanos testified that the shotgun was visibly scratched such that he could not see its serial number, R57-58, and the body worn camera footage showed that the gun bore a large, silvery scratch mark, Exh. 6 at T03:50:57Z; T03:51:00Z- T03:51:04Z; T03:51:28Z-T03:51:32Z. If the defacement was immediately apparent to Officer Bolanos, and is visible on the body worn camera footage, then a reasonable factfinder could conclude that defendant similarly would have noticed that the shotgun was defaced when he bought it, brought it home, took it upstairs to his bedroom, and hid it under his mattress. R55-56, 58-59, 61, 79-80. Thus, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could find that defendant knew the shotgun was defaced.

Although the trial court followed binding appellate court precedent holding that knowledge of the defacement is not an element of the offense, and thus did not make a finding that defendant knew the shotgun was



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defaced, this provides no basis to reverse defendant's conviction. Where an essential element of the offense was not considered in a bench trial, harmless-error analysis applies. *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 83. This is because such an error is analogous to an erroneous jury instruction, which "'is harmless if it is demonstrated that the result of the trial would not have been different had the jury been properly instructed.'" *People v. Mohr*, 228 Ill. 2d 53, 69 (2008) (quoting *People v. Pomykala*, 203 Ill. 2d 198, 210 (2003)); *People v. Dennis*, 181 Ill. 2d 87, 95 (1998) ("Where the evidence of guilt is clear and convincing, an instructional error may be deemed harmless."). Here, the result of defendant's trial would have been the same if the trial court had been required to find that he knew of the defacement, because, for the reasons explained, the evidence of defendant's knowledge was overwhelming. Thus, any error was harmless and this Court should affirm defendant's conviction.

### D. In the alternative, if the evidence was insufficient to prove defendant's knowledge of the firearm's defacement, then the proper remedy is remand for a new trial.

Should the Court hold both that knowledge of the defacement is an element of the offense under section 24-5(b) and that the evidence at trial was insufficient to prove that element, then the proper remedy is to remand for a new trial where the People would have an opportunity to prove the newly recognized element.



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At the time of trial, binding appellate precedent held that the People did not need to present evidence that defendant knew his shotgun was defaced. *See People v. Casler*, 2020 IL 125117, ¶ 65 ("the State had no reason to introduce evidence regarding a material impediment requirement because, at the time of trial, this court had not yet held that the government was required to prove that element with regard to the furnishing of false information"). Had the People known that they needed to establish that defendant knew the shotgun was defaced, they might, for example, have introduced photographs of the shotgun showing that the defacement was so clear that it could not have escaped defendant's notice. Accordingly, if this Court determines that knowledge of the defacement is an element of defendant's offense, any insufficiency of the evidence would be the result of "the subsequent change in the law and not the State's failure to present sufficient evidence." *Id.* at ¶ 66. Under these circumstances, a second trial is permitted, because a reversal due to "a posttrial change in law . . . is analogous to one for procedural error and therefore does not bar retrial." *Id.* at ¶ 57.

Therefore, if the Court finds that the People were required to prove that defendant knew that the firearm he possessed was defaced, and also that the evidence presented at trial was insufficient to establish this newly identified element, the Court should remand for a new trial.



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## II. Section 24-5(b) Comports with the Second Amendment Because the Second Amendment Does Not Protect a Right to Possess a Defaced Firearm.

Defendant argues that this Court should read a knowledge of defacement element into section 24-5(b) because it would otherwise restrict constitutionally protected conduct, but the Second Amendment does not protect a right to possess a firearm with a defaced serial number.

### A. Second Amendment Principles and Standard of Review

The Supreme Court recently clarified the legal standard governing Second Amendment claims in *New York State Rifle & Pistol Association v. Bruen*, 142 S. Ct. 2111 (2022). *Bruen* declined to adopt the two-step framework that this Court and many others had adopted in the wake of *Heller v. District of Columbia*, 554 U.S. 570 (2008), and clarified that the regulation of conduct protected under the Second Amendment is not subject to means-end scrutiny (*i.e.*, the second step of the two-step analysis this and other courts historically applied). *Bruen*, 142 S. Ct. at 2127. Instead, *Bruen* endorsed the following standard: "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2129-30.

*Bruen*'s framework thus requires a threshold textual inquiry, followed (if necessary) by a historical inquiry. First, the court must ask whether "the



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Second Amendment's plain text covers an individual's conduct." *Id.* At this threshold step, defendant bears the burden to show that the Second Amendment's plain text covers his conduct, and thus presumptively protects that conduct. *See id.* at 2130 (only if "plain text covers an individual's conduct . . . must [the government] *then* justify its regulation") (emphasis added); *id.* at 2141 n.11 (respondents "shoulder[ed] the burden of demonstrating" consistency of New York's proper-cause requirement "*because* the Second Amendment's bare text covers petitioners' public carry") (emphasis added). If defendant satisfies that burden, then the Court moves on to ask whether the government has shown that its regulation is "consistent with the Nation's historical tradition of firearm regulation." *Id.* at 2130. The government may show that a challenged regulation aligns with historical tradition by identifying analogous historical regulations, meaning historical regulations that are "relevantly similar" to the challenged regulation with respect to "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 2132.

When evaluating defendant's Second Amendment challenge, "[a] court must construe [the challenged] statute so as to affirm its constitutionality, if reasonably possible." *In re Lakisha M.*, 227 Ill. 2d 259, 263 (2008); *see also People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290-91 (2003); *People v. Greco*, 204 Ill. 2d 400, 406 (2003); *People v. Malchow*, 193 Ill. 2d 413, 418 (2000). Accordingly, if a statute's "construction is doubtful, the doubt will be



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resolved in favor of the validity of the law attacked." *People v. Fisher*, 184 Ill. 2d 441, 448 (1998) (internal quotations omitted).

### B. Section 24-5(b) is constitutional under *Bruen*'s two-step analysis.

Section 24-5(b) comports with the Second Amendment because the plain text of that amendment does not protect the possession of defaced firearms. Moreover, the requirement that firearms bear serial numbers is consistent with the Nation's historical tradition of firearm regulation. Therefore, defendant's Second Amendment challenge fails.

#### 1. The possession of defaced firearms is not protected by the plain text of the Second Amendment.

Defendant cannot demonstrate that the text of the Second Amendment protects the possession of defaced firearms. "'Like most rights, the right secured by the Second Amendment is not unlimited,'" and it does not provide "'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'" *Bruen*, 142 S. Ct. at 2128 (2022) (quoting *Heller*, 554 U.S. at 626). Rather, the Second Amendment provides that "the right of the people to keep and bear [a]rms, shall not be infringed." U.S. Const. amend. II. When the "words and phrases" used in the Amendment are given the "'normal and ordinary'" meaning as understood by the framers, *Heller*, 554 U.S. at 576 (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)), it is clear that, by its plain terms, the Second



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Amendment protects the rights of law-abiding people to possess lawful firearms for lawful purposes.

The term "the people," as used in the Second Amendment, refers to "law-abiding" citizens. *See Heller*, 554 U.S. at 635 (Second Amendment protects rights of "law-abiding, responsible citizens to use arms in defense of hearth and home"); *Bruen*, 142 S. Ct. at 2122 (Second Amendment protects rights of "law-abiding citizens . . . to carry handguns publicly for their self-defense"); *see also Range v. Att'y Gen. of the United States*, No. 21-2835, __ F.4th __, 2022 U.S. App. LEXIS 31614, at * (3d Cir. 2022) (noting that *Bruen* "characterized the holders of Second Amendment rights as 'law-abiding' citizens no fewer than fourteen times"). And the term "arms," as used in the Second Amendment, means weapons "typically possessed by law-abiding citizens" for "lawful purposes like self-defense." *Heller*, 554 U.S. at 624-25; *see id.* at 623 ("Second Amendment right . . . extends only to certain types of weapons."); *Bruen*, 142 S. Ct. at 2162 (Second Amendment right is "not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose" (quoting *McDonald v. City of Chi.*, 561 U.S. 742, 786 (2010) (plurality opinion)); *Marzzarella*, 614 F.3d 85, 90 (3d Cir. 2010) (Second Amendment protects possession of weapons "commonly owned by law-abiding citizens" (citing *Heller*, 554 U.S. at 624-25)).

Firearms that have been defaced so that they are untraceable by law enforcement therefore are not covered by the plain text of the Second



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Amendment because they are not typically used by law-abiding citizens for lawful purposes. *See Heller*, 554 U.S. at 625 ("[T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such a short-barreled shotguns."). Rather, defaced firearms are uniquely suited for use in the commissions of crimes. *See supra* pp. 8-9. And "[b]ecause a firearm with a serial number is equally effective as a firearm without one, there would appear to be no compelling reason why a law-abiding citizen would prefer an unmarked firearm." *Marzzarella*, 614 F.3d at 95. After all, "the presence of a serial number does not impair the use or functioning of a weapon in any way," and so "a person is just as capable of defending himself with a marked firearm as with an unmarked firearm." *Id.* at 94. Rather, defaced firearms "have value primarily for persons seeking to use them for illicit purposes." *Id.* at 95. Accordingly, possession of defaced firearms falls outside the protection of the Second Amendment. *See United States v. Holton*, 2022 U.S. Dist. LEXIS 200327, at *10 (N.D. Tex. Nov. 3, 2022) (federal prohibition against possession of defaced firearms not covered by Second Amendment under first step of *Bruen*). Defendant has not met his burden to show that the Second Amendment's plain text covers his conduct and his Second Amendment claim fails for that reason alone.

**2. Section 24-5(b) is consistent with the nation's history of firearm regulations.**

Even defendant could demonstrate that possession of firearms with defaced serial numbers fell within the plain text of the Second Amendment,



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section 24-5(b)'s prohibition of such possession would comport with the Second Amendment because it is consistent with a longstanding tradition of similar regulations directed at identifying and tracking firearms, and thus satisfies the historical analysis under *Bruen*'s second step. At the threshold, the Supreme Court has acknowledged the rich historical pedigree of gun licensing regimes, which provide a means of identifying and tracking firearms. *Heller* expressly approved laws that "in any event amounted to at most a licensing regime." 554 U.S. at 632-33. And *Bruen* recognized that "[t]hroughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms, the manner of carry, or the exceptional circumstances under which one could not carry arms." 142 S. Ct. at 2138.

Section 24-5(b) is consistent with this historical tradition. *See id.* at 2132 (regulation is consistent with historical regulations when similar with respect to "how and why the regulations burden a law-abiding citizen's right to armed self-defense."). Historical examples show that around the time the Second Amendment was adopted, a variety of laws allowed States to register and trace firearms. For instance, "mandatory musters" required people who possessed firearms to "show up and register their firearm[s]." Meg Penrose, *A Return to the States' Rights Model: Amending the Constitution's Most Controversial and Misunderstood Provision*, 46 Conn. L. Rev. 1463, 1483



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(2014). Similarly, "[a] 1631 Virginia law required the recording not only of all new arrivals to the colony, but also 'of arms and munitions.'" Robert J. Spitzer, *The Second Generation of Second Amendment Law & Policy: Gun Law Histroy in the United States and Second Amendment Rights*, 80 Law & Contemp. Prob. 55, 76 (2017). Regulations like these "allow[ed] government . . . to keep track of who had firearms," Saul Cornell & Nathan DeDino, *A Well Regulated Right: The Early American Origins of Gun Control*, 73 Fordham L. Rev. 487, 505 (2004), and therefore are analogous to laws prohibiting the possession of firearms with defaced serial numbers.

Regulations requiring taxation and inspection of firearms are similarly analogous to section 24-5(b)'s effort to ensure firearm serial numbers remain intact and thus can be used to identify and trace firearms. Indeed, "restrictions on the commercial sale of firearms" date back to colonial governments. *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 685 (9th Cir. 2017). For example, the colony of Connecticut required inspections of all firearms and ammunition. Michael A. Bellesiles, *Gun Laws in Early America: The Regulation of Firearms Ownership, 1607-1794*, 16 Law & Hist. Rev. 567, 583 (1998). And in the 1800s, several States taxed personally owned firearms. Robert J. Spitzer, *The Second Generation of Second Amendment Law & Policy: Gun Law Histroy in the United States and Second Amendment Rights*, 80 Law & Contemp. Prob. 55, 76-77 (2017). Such regulations placed burdens on gun owners that enabled the States to keep track of guns and gun



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ownership. In the modern context, serial numbers serve a similar purpose. *See Bruen*, 142 S. Ct. at 2133 ("require[ing] only that the government identify a well-established and representative historical *analogue*, not a historical *twin*") (emphasis in original). They enable law enforcement to regulate the sale of firearms and identify guns that have been stolen or used for unlawful purposes.

Accordingly, as a practical matter, section 24-5(b) serves the same interest of the historical analogues — identifying and tracking firearms — but does so by imposing a much lighter burden than historical measures involving mandatory firearm registration or taxes on personally held firearms. All that section 24-5(b) requires is that a person look at any firearm in his or her possession to confirm that the serial number is intact. This burden is not only lighter than sale restrictions, mandatory firearm registration, and taxes on personally held firearms, but lighter than the licensing requirement in "shall issue" States that the *Bruen* Court recognized as constitutional. *See* 142 S. Ct. at 2138 n.9.

Thus, contrary to defendant's argument, the Second Amendment does not require that this Court read into section 24-5(b) a knowledge of defacement element that the General Assembly did not intend because prohibiting the possession of defaced firearms is consistent with the nation's history and tradition of regulating firearms to permit their identification and tracking.



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## CONCLUSION

This Court should affirm the appellate court's judgment.

November 30, 2022

Respectfully submitted,

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**RULE 341(c) 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.

/s/ Katherine Snitzer
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## PROOF OF FILING AND 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 November 30, 2022, the foregoing **Brief of 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 served the person named below at the following registered email address:

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