No. 124563

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	On Appeal from the Appellate Court of Illinois, First Judicial District No. 1-17-0258
Plaintiff-Appellant,	)	
	)	There on Appeal from the Circuit Court of the First Judicial Circuit,
v.	)	Cook County, Illinois
	)	No. 14 CR 10466
JASPER McLAURIN,	)	The Honorable Thaddeus L. Wilson,
Defendant-Appellee.	)	Judge Presiding.

REPLY BRIEF OF PLAINTIFF-APPELLANT
PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

ARGUMENT

I. Sergeant Fraction's and Officer Rodriguez's Combined Testimony Sufficed to Prove Defendant's Possession of a Firearm and Firearm Ammunition, and Defendant's Suggestion that the Trial Court Discredited Officer Rodriguez's Testimony Is Unsupported by the Record.

As explained in the People's opening brief, the trial testimony of Sergeant Nicheloe Fraction and Officer Jessie Rodriguez established that Fraction observed defendant in broad daylight "carry[] a silver handgun" across a Chicago street and enter a white conversion van, R. CC-9-13, 16-17, 19-20; during the ensuing traffic stop, defendant exited the van, and Rodriguez recovered a loaded, nine-millimeter, chrome handgun — matching Fraction's description — from beneath the van, and at the very location where defendant had exited it, R. CC-33-37, 51-53; R. CC-15-16, 24-25, 27-28.[1] *See* Peo. Br. 5-7, 12-17. Rodriguez unequivocally testified that the recovered firearm "was loaded." R. CC-36. In addition, his inspection and actions plainly would permit a rational trier of fact to conclude that the device was, in fact, a firearm. First, Rodriguez "cleared" the gun by removing both a "magazine" from the gun and a bullet, ready to be fired, from the gun's "chamber." *Id.* Second, Rodriguez identified the device as a nine-millimeter caliber handgun, R. CC-37; *see also* R. CC-35, a particularly credible determination given his fifteen years of law enforcement experience, R. CC-

[1] "C__," "R. __," "Peo. Br. __," and "Def. Br. __" refer to the common law record, the report of proceedings, the People's opening brief, and defendant-appellee's brief, respectively.

29. And, finally, Rodriguez kept the device in his custody from the time that it was recovered until he returned to the police station and personally inventoried it. R. CC-35-37; *see also* R. CC-46-47.

Viewing this testimony in the light most favorable to the State, as required under *Jackson v. Virginia*, 443 U.S. 307, 319, 319 n.13, 326 (1979), a rational trier of fact could have found beyond a reasonable doubt that defendant possessed a firearm (that was loaded with firearm ammunition). *See People v. Gonzalez*, 239 Ill. 2d 471, 478 (2011); *People v. Jackson*, 232 Ill. 2d 246, 280-81, 284 (2009); *People v. Newton*, 2018 IL 122958, ¶ 24 (collecting cases). Accordingly, the evidence — which also included stipulations to defendant's prior criminal convictions and lack of a FOID card, *see* R. CC-55-56 — was sufficient to convict defendant of unlawful use of a weapon (UUW) under 720 ILCS 5/24-1.1(a) (2014), aggravated unlawful use of a weapon (AUUW) under 720 ILCS 5/24-1.6(a)(1)-(2), (a)(3)(C) (2014), and being an armed habitual criminal (AHC) under 720 ILCS 5/24-1.7(a)(2) (2014).[2]

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[2] Despite defendant's suggestion, Def. Br. 7, 13, 29-30 (critiquing Fraction's inability to attest to firearm's operability), operability is not mentioned in the FOID Act's "firearm" definition, 430 ILCS 65/1.1 (2014), and the appellate court has held that unless otherwise specified, operability is not a prerequisite for conviction for a firearm offense. *E.g.*, *People v. Williams*, 394 Ill. App. 3d 286, 290 (1st Dist. 2009); *People v. White*, 253 Ill. App. 3d 1097, 1098 (4th Dist. 1993); *People v. Hester*, 271 Ill. App. 3d 954, 956-57 (4th Dist. 1995); *see also People v. Carey*, 2018 IL 121371, ¶ 31 (declining to address claim that evidence was insufficient because State did not prove that inoperable gun qualified as "firearm" under FOID Act). In defendant's case, none of the charged offenses contains an affirmative operability requirement. In any event, Rodriguez's testimony belies the notion that defendant's firearm was inoperable.

The trial court made no adverse credibility determination with respect to Officer Rodriguez such that a reviewing court would be permitted to disregard Rodriguez's testimony, as defendant asks this Court to do. *Compare* R. CC-67-70, *with* Def. Br. 8-9, 14 (citing R. CC-69); *see also People v. McLaurin*, 2018 IL App (1st) 170258, ¶¶ 22, 26 (appellate court concluding, without explanation or record support, that trial court found Rodriguez's testimony "not relevant"). Indeed, the opposite is true; the trial court's summation of the evidence in announcing the guilty verdict expressly highlighted the key points from Rodriguez's testimony: that (a) Rodriguez recovered the gun under the van, "close to the door area where the defendant. . . and only the defendant" had exited it, (b) the weapon "matche[d] the description of size and color given by Officer Fraction," and (c) "the weapon was fully loaded and had to be unloaded by the officer when it was recovered." R. CC-68-69.

Defendant attempts to recast the trial court's subsequent reference to the "absence of a recovered firearm" as a tacit rejection of Officer Rodriguez's testimony, contending that the finding of guilt "[c]learly . . . was based only on the object Sgt. Fraction claims to have seen Defendant holding, not the firearm found under the van" — notwithstanding that the trial court had just emphasized Rodriguez's testimony a moment earlier. *See* Def. Br. 8 (citing R. CC-69); *see also* Def. Br. 14. But it is plain from context that the court was referring to the fact that, under *People v. Washington*, 2012 IL 107993, and

its progeny up to that point, defendant's conviction for the charged firearm offenses was not contingent on the State's introduction of the firearm at trial. *See* R. CC-69 (emphasis added) ("[T]he State need not *present* a firearm in order for the trier of fact to find the defendant possessed one. In the absence of a recovered firearm, the witnesses['] unequivocal testimony that they observed the defendant carrying a firearm is sufficient."). Indeed, as the trial court alluded to, less than two weeks before defendant's trial, *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 15, affirmed that the State "need not present a firearm in order for the trier of fact to find the defendant possessed one," as defined in the FOID Act — an application of *Washington* that this Court would approve a year later in *People v. Wright*, 2017 IL 119561. *See* R. CC-69. And contrary to defendant's suggestion, which theory of the case the trial court subjectively believed when it convicted defendant is "wholly unrelated" to the sufficiency question. *Jackson*, 443 U.S. at 319 n.13. Thus, it does not matter whether the trial court believed that there was one gun (observed by both officers) or two different guns. Absent an adverse credibility determination, the only relevant inquiry is whether "*any* rational trier of fact could have found" defendant guilty based on "*all of the evidence*," including Rodriguez's testimony. *Id.* at 319.

Nor is it logical to infer from the trial court's discussion of the *Washington*/*Wright* rule that the court must have been rejecting Rodriguez's testimony as incredible. *See* Def. Br. 13-14. The State's case against

defendant — Rodriguez's testimony included — was controlled by such rule, as the State was required to prove defendant's possession of a firearm, as defined in the FOID Act, but had not introduced the firearm into evidence or otherwise presented particularized evidence that the firearm was a device "designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1; *see Jackson*, 2016 IL App (1st) 141448, ¶¶ 15-18. The trial court merely clarified (correctly) that under this Court's precedent, the State was not obliged to do so. R. CC-69; *see Wright*, 2017 IL 119561, ¶¶ 70-77; *Washington*, 2012 IL 107993, ¶¶ 35-37; *see generally* Peo. Br. 17-27 (discussing 720 ILCS 5/2-7.5 (2014) and 720 ILCS 5/2-7.1 (2014)'s incorporation of FOID Act's "firearm" definition into Criminal Code, including possessory offenses charged against defendant under 720 ILCS 5/24-1.7(a)(2); 720 ILCS 5/24-1.1(a); 720 ILCS 5/24-1.6(a)(1)-(2), (a)(3)(C)); *see also infra* Sec. II (same).

The same goes for the language defendant cites from the trial court's denial of his motion for a directed verdict. *See* Def. Br. 13 (citing R. CC-60). Again, the trial court never mentioned Rodriguez's credibility (or lack thereof); it merely cited Fraction's testimony in support of its conclusion that the State had presented at least some evidence as to each element of the charged offenses in Counts 1-7, 9, and 11, precluding a directed verdict on those counts. *See* R. CC-60. The fact that the trial court did not mention Rodriguez's testimony in denying the motion or at the precise moment that it

announced the guilty verdict provides no basis for a reviewing court to discount or ignore that testimony in addressing defendant's ensuing sufficiency challenge. *See* Peo. Br. 15-16 (citing *Jackson*, 443 U.S. at 319 n.13; *People v. Cooper*, 194 Ill. 2d 419, 433 (2000); *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007); *People v. Curtis*, 296 Ill. App. 3d 991, 1000 (4th Dist. 1998); *People v. Mandic*, 325 Ill. App. 3d 544, 546-47 (2d Dist. 2001)); Def. Br. 8-9.

In sum, because the circuit court made no adverse credibility determination with respect to Officer Rodriguez, the appellate court was wrong to disregard his testimony. *See Jackson*, 443 U.S. at 319; *McLaurin*, 2018 IL App (1st) 170258, ¶¶ 22, 26; *see also* Def. Br. 11-13, 14-18 (incorrectly addressing sufficiency of Fraction's testimony only).

This Court also need not entertain defendant's musings that perhaps someone else had discarded a loaded firearm matching the description of the firearm that Fraction saw defendant carrying, and in the precise location in the street where not only the traffic stop occurred, but also where defendant exited the van, Def. Br. 19, as they are a thinly veiled appeal to Illinois's long-discarded "reasonable hypothesis of innocence" rule. *See People v. Pintos*, 133 Ill. 2d 286, 291 (1989) (collecting cases); *see also People v. Gilliam*, 172 Ill. 2d 484, 515-16 (1996). The question presented is whether, after drawing all reasonable inferences from the evidence in the State's favor, "*any* rational trier of fact" could have found the required elements of the charged crimes beyond a reasonable doubt. *Jackson*, 443 U.S. at 319; *Gonzalez*, 239 Ill. 2d at

478. Here, that means viewing in the light most favorable to the State (1) Fraction's testimony that she saw defendant carrying a firearm, (2) Rodriguez's testimony that he recovered and disarmed a loaded, nine-millimeter firearm matching Fraction's description inches from where defendant exited the stopped van, and (3) defendant's undisputed criminal history and lack of a FOID card. Because a rational trier of fact could have found from this evidence, beyond a reasonable doubt, that defendant possessed a firearm in violation of subsections 24-1.7(a)(2), 24-1.1(a), and 24-1.6(a)(1)-(2), (a)(3)(C) of the Criminal Code, this Court should reverse the appellate court's judgment and affirm defendant's convictions.

II. Possessory Firearm Offenses Fall Under *Wright*'s Rule, But Even If *Wright* Were Limited to Its Facts, the Same Rationale Should Apply to All Firearm Offenses.

In *Wright*, this Court extended *Washington*'s holding permitting a trier of fact to reasonably infer possession of a "real gun" from a single eyewitness's reliable testimony, reasoning that the "same rationale" for allowing reliable testimony to prove a gun for an offense containing a "dangerous weapon" element applies to offenses containing a "firearm, as defined in the FOID Act" element. *Wright*, 2017 IL 119561, ¶¶ 73, 76; *see id.* ¶¶ 70-77; *Washington*, 2012 IL 107993, ¶¶ 35-37; *see also* Peo. Br. 17-21. In either context, a witness's unequivocal testimony that she viewed a defendant in possession of a gun, bolstered by the circumstances under which

the witness was able to identify the object as a gun, may permit the reasonable inference that the gun was authentic.

Contrary to defendant's suggestion, Def. Br. 20-21, 23, this Court expressed no intent to limit its holding in *Wright* to only *some* offenses containing the element of a "firearm, as defined in the FOID Act," or to only the particular offense charged or factual scenario of that case. 2017 IL 119561, ¶¶ 76-77. Indeed, the Second Division of the Illinois Appellate Court, First District, recently recognized this, repudiating the First Division's interpretation below that *Wright* does not control in possessory firearm cases. *See People v. Clifton*, 2019 IL App (1st) 151967, ¶ 41 (rejecting *McLaurin* majority's view that "a different standard of proof applies to a 'firearm' in robbery cases as opposed to possession cases" and adopting Justice Mikva's approach that "the same definition of 'firearm' applies in both the robbery and the possession contexts"); *see also People v. McLaurin*, 2018 IL App (1st) 170258, ¶¶ 33-36 (Mikva, J., specially concurring) (citations omitted) ("I join in all aspects of this opinion, other than the court's suggestion . . . that the evidence needed to prove the illegal possession of a firearm is somehow different than the evidence needed to prove that a defendant possessed a firearm during a robbery. . . . [I]n both situations circumstantial evidence, if strong enough, may be relied upon to prove this necessary fact.").

Defendant posits that AHC, UUW, and AUUW are distinguishable from armed robbery because the FOID Act's "firearm" definition has not been

incorporated into the armed robbery statute. Def. Br. 20-21. But *Wright* forecloses this argument, as this Court plainly identified the incorporation of such definition into the armed robbery statute, 2017 IL 119561, ¶ 71 (citing 720 ILCS 5/2-7.5 (2010); 720 ILCS 5/18-1 (2010); 720 ILCS 5/18-2 (2010)), before holding that for offenses that incorporate the FOID Act's definition of a "firearm" — there, armed robbery with a firearm, and here, several possessory firearm offenses — eyewitness testimony may suffice to prove the "firearm" element of the offense, *id.* ¶¶ 76-77. And as explained in the People's opening brief, *see* Peo. Br. 19-21, Section 0.5 incorporates the FOID Act's definition uniformly throughout the Criminal Code, providing that "[f]or the purposes of *this Code*, the words and phrases described in this Article have the meanings designated in this Article," 720 ILCS 5/2-0.5 (2014) (emphasis added). Thus, just as the armed robbery statute (and in particular, subsections (a)(1) through (a)(4) therein) falls squarely within the Criminal Code and makes reference to the term "firearm," *see* 720 ILCS 5/18-2 (2019), so do the statutes defining AHC, UUW, and AUUW, *see* 720 ILCS 5/24-1.7(a)(2); 720 ILCS 5/24-1.1(a); 720 ILCS 5/24-1.6(a)(1)-(2), (a)(3)(C). *See also Clifton*, 2019 IL App (1st) 151967, ¶ 41 (citation omitted) ("While true that the State may be able to prove a firearm by different types of circumstantial evidence in an armed robbery case than in a possession case . . . the same definition of 'firearm' applies in both . . . contexts.").

Not only is defendant's argument foreclosed by *Wright*, but he identifies no plausible rationale why eyewitness testimony would suffice to prove a "firearm" in armed robberies but not possessory firearm offenses. A defendant can discard a firearm prior to apprehension in a possession case just as he can in an armed robbery case, posing the same challenges for police and prosecutors seeking to enforce firearm offenses by dangerous individuals. *See* Def. Br. 26, 29-30. And although the type of circumstantial evidence in a possession case (e.g., holding, displaying, or tucking into a waistband) may differ from the type offered in a robbery (e.g., pointing or threatening), *Clifton*, 2019 IL App (1st) 151967, ¶ 41, the "proper resolution" of any "conflicting inferences" raised by circumstantial evidence in each case is "best left to the trier of fact," *People v. Campbell*, 146 Ill. 2d 363, 380 (1992).

As for defendant's concern about reducing the evidentiary burden for possessory firearm offenses, Def. Br. 27, it bears reminding that what defendant takes issue with is only the type of proof necessary to demonstrate his guilt, not that the State would no longer be held to the "beyond a reasonable doubt" standard. In any event, this Court has long permitted criminal conviction based solely on circumstantial evidence, *People v. Patterson*, 217 Ill. 2d 407, 435 (2005), and a far greater cause for alarm is defendant's (and the appellate majority's) proposed adoption of variable requirements to prove the exact same criminal element, depending solely on the court's subjective assessment of which firearm crimes the State should be

given greater "leeway" to enforce. Def. Br. 29; *see also McLaurin*, 2018 IL App (1st) 170258, ¶ 24 (differentiating acceptable form of proof based only on purported "serious[ness]" of the offense).[3] This Court should therefore clarify that *Wright* governs *all* cases in which the State must prove possession of a "firearm, as defined in the FOID Act," including the possessory firearm offenses of which defendant was convicted, AHC, UUW, and AUUW.

III. This Court Should Not Revisit *Wright*.

Lacking any principled basis to carve possessory firearm offenses out of *Wright*'s holding, defendant also argues that *Wright* should be overruled. *See generally* Def. Br. 19-33. But he offers no "good cause" or "compelling reasons" to depart from *stare decisis* and relitigate this settled point of law a mere two years after this Court reaffirmed it. *People v. Espinoza*, 2015 IL 118218, ¶ 30; *see Wright*, 2017 IL 119561, ¶¶ 70-77 (broadening application of rule announced in *Washington*, 2012 IL 107993); *see also* Peo. Br. 18-19 (discussing same). When, as here, "a question has been deliberately examined and decided, the question should be considered settled and closed to further argument." *Espinoza*, 2015 IL 118218, ¶ 26; *see also People v. Clemons*, 2012 IL 107821, ¶ 9. Indeed, "[a]ny departure from *stare decisis* must be specially justified." *Espinoza*, 2015 IL 118218, ¶ 30.

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[3] If anything, making it easier to prove a "firearm" when used as a sentencing enhancement than when used as an element of certain substantive offenses would directly undercut the principles established in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Alleyne v. United States*, 570 U.S. 99 (2013), and risk establishing a framework that is *de facto* unconstitutional.

Defendant's cited reasons for revisiting *Wright* do not withstand scrutiny under this standard. First, *Wright* does not contravene, or otherwise render "superfluous," the Criminal Code's incorporation of the FOID Act's "firearm" definition. *See generally* Def. Br. 19-26. The "firearm" definition in Section 1.1 of the FOID Act serves two purposes: (1) it identifies a broad class of items that qualify as "firearms" (as opposed to a lengthy and ever-evolving list of firearm makes and models), and (2) it excludes certain subcategories of items that, despite technically satisfying the broad definition, are not "firearms" for purposes of the FOID Act's license requirement (e.g., a collectible antique like a musket, a paint ball gun, a B-B gun, a flare gun, certain construction tools, etc.). 430 ILCS 65/1.1. Sections 7.5 and 7.1 of the Criminal Code maintain this delineation, thereby differentiating between (1) conduct that is criminal (or subject to a higher sentence) because it was committed with a firearm, and (2) conduct that is not to be treated as a firearm crime (or subject to the higher penalties), notwithstanding the involvement of a device technically satisfying the broad criteria of the "firearm" definition. *See* 720 ILCS 5/2-7.5; 720 ILCS 5/2-7.1; *see also* 720 ILCS 5/2-0.5.

Wright's holding that eyewitness testimony can suffice to prove a "firearm, as defined in the FOID Act" does not jeopardize this incorporation of the "firearm" definition into the Criminal Code. Under the controlling statutory framework, a convicted felon's possession of a Glock 19 handgun

without a FOID card, for example, violates 720 ILCS 5/24-1.1, while his possession of a paintball gun without a FOID card does not. This distinction holds true after *Wright*: a felon is subject to criminal prosecution for UUW if arrested in possession of a Glock 19 but not if he possessed the paintball gun (or a B-B gun or a nautical flare gun, as the case may be).

Nor does *Wright*'s holding — which would permit the trier of fact, in a Glock 19 case that proceeds to trial without the recovery and/or admission of the gun, to reasonably infer the Glock 19's authenticity from reliable eyewitness testimony on the subject — nullify the Criminal Code's distinction between firearms and non-firearms. Under *Wright*, a UUW conviction remains subject to challenge on the ground that it is predicated on testimony from which it is *not* reasonable to infer that the defendant possessed a "real gun" as "defined in the FOID Act." *Compare Wright*, 2017 IL 119561, ¶¶ 9-12, 76-77 (unchallenged testimony of three eyewitnesses sufficed to prove "firearm" as defined in FOID Act), *with People v. Ross*, 229 Ill. 2d 255, 258, 273-77 (2008) (evidence insufficient to prove armed robbery with "dangerous weapon" where victim described item as "gun" but police officer described item as "BB caliber gun" and inventory sheet listed item as "pellet gun"). Thus, defendant is wrong to think that the Code's distinction between firearms and non-firearms is somehow rendered meaningless by *Wright*'s holding that particularized evidence that a device is "designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or

escape of gas" is not required to prove a "firearm, as defined in the FOID Act" beyond a reasonable doubt.

Likewise, *Wright*'s holding does not impermissibly shift the burden of proof, Def. Br. 33-35; the State must prove its case, including any "firearm" element, beyond a reasonable doubt, regardless of whether a firearm is recovered and submitted as evidence. Indeed, that task may prove more difficult when the State does not recover the gun or, for whatever reason, does not or cannot present it at trial. *Wright* does not establish a presumption that an alleged firearm is an actual firearm, or otherwise require a defendant to prove that the alleged firearm is not an actual firearm, and thus does not impermissibly shift the burden of proof. *Cf. People v. Hardman*, 2017 IL 121453, ¶ 43 ("The trier of fact was at all times free to accept or reject a conclusion that the evidence demonstrated that [the address in question] was a school."); *Ross*, 229 Ill. 2d at 273-77 (burden shifting does not occur by merely permitting trier of fact to "make an inference of dangerousness based upon the evidence").[4]

[4] Defendant's related Confrontation Clause argument is a non-starter, *see* Def. Br. 34-35, as the Confrontation Clause concerns a defendant's right to confront witnesses, not inanimate objects. *See generally* U.S. Const., amend. VI; *People v. Stechly*, 225 Ill. 2d 246 (2007); *see also Davis v. Washington*, 547 U.S. 813 (2006). *Wright* does not interfere with a criminal defendant's right to confront an eyewitness who attests to his possession or use of a firearm, and defendant took full advantage of that right here. *See* R. CC-17-27 (cross-examination of Fraction); R. CC-37-51, 54 (cross-examination and recross-examination of Rodriguez).

Defendant's complaint that it may be difficult to visually discern whether an object is a real firearm or a fake or exempted device, Def. Br. 22-23, 26-27, is a subject ripe for cross-examination. But he fails to establish that collectible antique guns, convincing replicas, and the like are so commonly the cause of wrongful firearm prosecutions that *Wright*'s settled rule must be revisited in order to prevent a "'serious detriment . . . likely to arise [and] prejudicial to public interests'" — particularly, as compared to the harm to the public interest associated with upending settled precedent related to the prosecution of dangerous individuals who unlawfully arm themselves with deadly weapons. *Vitro v. Mihelcic*, 209 Ill. 2d 76, 82 (2004) (quoting *Maki v. Frelk*, 40 Ill. 2d 193, 196 (1968)).

By the same token, defendant's analogy to Illinois's controlled substance testing requirements proves inapt, for, unlike guns, hundreds of everyday substances can be mistaken for illegal drugs. *See* Def. Br. 27-29. Indeed, "[l]ook-alike substances (pseudo narcotics) are sold with such regularity that the legislature has drafted a criminal statute proscribing their sale." *People v. Jones*, 174 Ill. 2d 427, 430 (1996); *see also* 720 ILCS 570/404 (2019). Not to mention that (1) the qualities that make a drug a drug occur on a molecular level, making it not just difficult to visually discern a true drug from a look-alike substance, but physically impossible; (2) assuming it were possible to do so, most lay witnesses lack the requisite personal experience to identify and differentiate various illegal drugs from

innocuous look-alikes; and (3) the degree to which controlled substance offenses are criminally penalized generally depends on the precise weight of the drugs, thereby necessitating an equally precise testing regimen — and even then, the rules are not so rigid as to preclude inferences beyond a reasonable doubt based on random testing of "sufficiently homogenous" samples. *Jones*, 174 Ill. 2d at 428-29. Guns, by contrast, are sufficiently common and visually identifiable that a lay witness, subject to cross-examination, can typically be entrusted to recognize one.

Finally, defendant's suggestion that *People v. Murray*, 2019 IL 123289, dictates a reversal of *Wright*, Def. Br. 31-32, is undercut by *Murray*'s determination that proof of a "physical object" differs from proof of a "street gang," 2019 IL 123289, ¶ 45. This distinction is logical; "physical objects" — such as a gun, church, or school — are identifiable based on "knowledge and observations in the affairs of life." *Newton*, 2018 IL 122958, ¶ 28. Thus, this Court has repeatedly allowed their proof beyond a reasonable doubt without particularized evidence, even where the applicable statute described the characteristics that defined the object at issue. *See id.* ¶¶ 17, 20, 25-29 (statute provided that property must be "used primarily for religious worship" to "fall within [its] ambit," yet particularized evidence not required to establish that purported churches are "used primarily for religious worship"); *see also Hardman*, 2017 IL 121453, ¶¶ 36-45; Peo. Br. 21-23. On the other hand, whether an association of individuals is a street gang because

it constitutes a "hierarch[ical]" "confederation" of criminals engaging in a "course or pattern of criminal activity" is not inferable from lay observation and common experience. *See* 740 ILCS 147/10 (2019) (defining "streetgang"). *Murray* thus provides no "good cause" or "compelling reason" to depart from *stare decisis* and overturn *Wright*. *Espinoza*, 2015 IL 118218, ¶ 30.

CONCLUSION

For these reasons, and those set forth in the People's opening brief, this Court should reverse the appellate court's judgment and affirm defendant's convictions.

December 9, 2019

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) 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, is seventeen pages.

/s/ *Evan B. Elsner*
EVAN B. ELSNER

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. The undersigned deposes and states that on December 9, 2019, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, and served upon the following e-mail addresses of record:

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

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