No. 128123

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANDREW RAMIREZ, Defendant-Appellant.	)))))))))))	Appeal from the Appellate Court of Illinois, No. 1-19-1392. There on appeal from the Circuit Court of Cook County, Illinois, No. 18 CR 7591. Honorable Timothy Joseph Joyce, Judge Presiding.

BRIEF AND ARGUMENT FOR DEFENDANT-APPELLANT

JAMES E. CHADD
State Appellate Defender

DOUGLAS R. HOFF
Deputy Defender

MATTHEW M. DANIELS
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

ORAL ARGUMENT REQUESTED

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CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE CASE

Andrew Ramirez was convicted of possession of a defaced firearm after a bench trial and was sentenced to two years of probation.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I. Was the evidence at Andrew Ramirez's bench trial sufficient to prove him guilty of possession of a defaced firearm where the prosecution did not prove beyond a reasonable doubt that Andrew knew the recovered firearm was defaced?

II. At Andrew Ramirez's bench trial, the trial court found Andrew guilty of possession of a defaced firearm. In announcing its verdict, the trial court said the prosecution was not required to prove beyond a reasonable doubt that Andrew knew the recovered firearm was defaced. Does the trial court's misapprehension of the law entitle Andrew to a new trial?

STATUTES AND RULES INVOLVED

720 ILCS 5/24-5 (2018) – **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.

720 ILCS 5/4-3 (2018) – **Mental State**.

(a) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in Sections 4-4 through 4-7.

(b) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the

statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state defined in Sections 4-4, 4-5 or 4-6 is applicable.

(c) Knowledge that certain conduct constitutes an offense, or knowledge of the existence, meaning or application of the statute defining an offense, is not an element of the offense unless the statute clearly defines it as such.

720 ILCS 5/4-9 (2018) – **Absolute liability.**

A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4-4 through 4-7 if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $1,000, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

STATEMENT OF FACTS

In 2018, Andrew Ramirez was 31 years old and had no prior felony convictions. (Sec. C. 75, 77-78; R. 125) He was born and raised in Chicago, the youngest of four children. (Sec. C. 78) After his parents separated, Andrew was raised by his mother, Irene Morales-Ramirez, a laborer; the two have an excellent relationship. (Sec. C. 78; R. 132) Andrew graduated from Martin West Alternative High School in 2005 with a B-average. (Sec. C. 78) He worked as a machine operator at a packing plant in Chicago. (Sec. C. 76, 78) Andrew lived with Irene on the city's southwest side in a two-story single-family home; he made repairs there and helped pay the mortgage and household bills. (Sec. C. 80; R. 33-34, 129) He previously had a seven-year relationship with his high school sweetheart, with whom he had a daughter, Imani. (Sec. C. 79) Andrew shared custody of Imani, who was 10 in 2018, and was very involved in her life. (Sec. C. 79; R. 129-30, 132) He was also close to his siblings and their children, providing encouragement and help with schoolwork. (Sec. C. 78; R. 131, 132-34) Andrew attended church every Sunday, volunteered as a mentor to young people in Little Village through Youth Guidance's Becoming a Man program, and was considered a "very positive influence" in his community. (Sec. C. 79; R. 128)

Andrew's life changed on May 10, 2018. Shortly after 10:30 that evening, a Chicago Police tactical team executed a search warrant at his house. (R. 33-34, 49, 78-79; St. Ex. 1 at T03:34:44Z-T03:35:43Z; St. Ex. 6 at T03:34:44Z-T03:38:03Z)[1]

[1] The body camera footage in St. Ex. 1 is found in the electronic file in the record named "AXON_Body_2_Video_2018-05-10_2233." The body camera video for St. Ex. 6 is named "AXON_Body_2_Video_2018_05-10_2233(9)."

A confidential informant had told police that Andrew recently sold him a quarter-ounce of cannabis from the house. (Sup. C. 5-6) The informant claimed to have been buying cannabis from Andrew at the house for about six months. (Sup. C. 6)

Andrew and Irene were present when police forcibly entered the house with weapons drawn. (Sec. C. 78; R. 36-37, 50, 52-53; St. Ex. 1 at T03:34:44Z-T03:35:20Z) Members of the tactical team were wearing body cameras, which they used to video-record the warrant execution and search. (R. 41-42, 61) Police recovered a 20-gauge Benelli shotgun, a Mossberg shotgun, a 9-mm handgun, ammunition, and suspect cannabis. (R. 31-32, 55-57, 76-77; St. Ex. 1 at T03:37:45Z-T03:40:11Z, T03:40:59Z-T03:50:15Z)

A grand jury later returned a single-count indictment charging Andrew with possession of a defaced firearm (720 ILCS 5/24-5(b) (2018)). (C. 11-12) Specifically, the indictment alleged that Andrew possessed a 20-gauge Benelli shotgun whose serial number had been "changed, altered, removed, or obliterated." (C. 12) Andrew was not prosecuted for possessing any of the other recovered contraband. (C. 11-12)

At Andrew's bench trial, three tactical team members who executed the search warrant testified for the prosecution: Officer David Kato, Officer Adolfo Bolanos,[2] and Officer Guillermo Gama. (R. 33-86) The prosecution also introduced

[2] While the court reporter at trial gave Bolanos's first name a phonetic spelling of "Adolfus," the complaint for search warrant and the Chicago Police property inventory report for the recovered Benelli shotgun both spell the officer's name as "Adolfo." (Sup. C. 5-6; Sec. C. 21; R. 49) This brief uses the spelling Adolfo.

video of the search warrant execution from the body cameras of Kato and Bolanos. (R. 42, 61-62; St. Ex. 1 at T03:33:27Z-T04:02:49Z; St. Ex. 6 at T03:33:24Z-T04:03:42Z)

The body camera footage shows that after breaking down the house's front door, officers encountered Irene first, near the bottom of the stairway connecting the first and second floors, dressed in only a long t-shirt, her eyes half-closed, and visibly frightened. (R. 33-34, 36, 46-47, 49, 51, 78-79; St. Ex. 1 at T03:34:44Z-T03:35:43Z; St. Ex. 6 at T03:34:44Z-T03:38:03Z) After seeing Irene, Kato went upstairs. (R. 36; St. Ex. 1 at T03:35:09Z) He saw Andrew near the top of the staircase, coming down from the second floor. (R. 36-37, 43; St. Ex. 1 at T03:35:12Z) Andrew complied with Kato's orders to return upstairs and identify himself. (R. 38-40; St. Ex. 1 at T03:35:15Z-T03:35:20Z)

The second floor of the house consists of three rooms: one bedroom to the left of the staircase, another bedroom to the right of the staircase, and a common room in between the bedrooms at the top of the staircase. (R. 35, 43, 51; St. Ex. 6 at T03:38:10Z-T03:40:39Z) Kato handcuffed and searched Andrew in the common room. (St. Ex. 1 at T03:35:25Z-T03:35:45Z) Kato escorted Andrew into the bedroom to the left of the stairs. (R. 43-44; St. Ex. 1 at T03:35:46Z-T03:35:52Z) There, Andrew told Kato there were "two gauges" and a handgun in the room. (St. Ex. 1 at T03:37:15Z-T03:37:25Z, T03:38:22Z-T03:38:24Z) With Andrew's assistance, officers located two of the firearms: the Mossberg shotgun on a television stand, and the handgun, which was in a toy bin. (St. Ex. 1 at T03:37:25Z-T03:37:36Z, T03:37:45Z-T03:40:13Z; St. Ex. 6 at T03:39:03Z-T03:39:22Z) Both weapons were unloaded and in plain sight. (St. Ex. 1 at T03:37:25Z-T03:37:36Z; T03:37:45Z-T03:40:13Z,

T03:43:27Z-T03:44:30Z; St. Ex. 6 at T03:39:03Z-T03:39:22Z) Andrew was escorted to the first floor with Irene while officers continued searching the second floor. (St. Ex. 1 at T03:37:37Z-T03:49:00Z; St. Ex. 6 at T03:38:15Z-T03:46:34Z)

Police found firearm ammunition but could not locate the second shotgun Andrew mentioned. (St. Ex. 1 at T03:37:45Z-T03:40:13Z, T03:40:49Z-T03:49:00Z; St. Ex. 6 at T03:38:15Z-T03:46:34Z) Gama, Bolanos, and Sergeant DeLuna[3] questioned Andrew in the living room. (R. 64-65; St. Ex. 6 at T03:46:35Z-T03:48:38Z) After waiving his *Miranda* rights, Andrew said the second shotgun was in the same bedroom in "clear sight" near the television stand. (R. 64-65; St. Ex. 6 at T03:47:00Z-T03:48:38Z) Bolanos returned upstairs to the bedroom and found the unloaded Benelli shotgun beneath a mattress that was a few feet away from the television stand. (R. 55-57, 76-77; St. Ex. 1 at T03:49:49Z-T03:50:00Z; St. Ex. 6 at T03:48:38Z-T03:51:35Z)

Bolanos inspected the Benelli shotgun in the bedroom. (R. 57; Ex. 6 at T03:50:37Z-T03:51:35Z) At trial, Bolanos testified that the weapon's serial number had been scratched off. (R. 57-58) He did not say where specifically on the shotgun he looked for a serial number, nor did he testify about what knowledge, if any, he had concerning where the serial number is typically located on that make and model. (R. 48-77) Bolanos's body camera footage shows him mention, "This one's defaced" as he inspected the Benelli, but on the video he does not identify where he observed the defacement. (St. Ex. 6 at T03:51:24Z-T03:51:35Z)

Gama testified that during the search, he recovered proof of residency about

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[3] Sergeant DeLuna's first name is not in the record. He did not testify at trial.

two or three feet away from where the Benelli was found, sitting in a pile of papers on the television stand. (R. 79-80) This proof of residency, which the prosecution introduced at trial as People's Exhibits 6 and 7, consisted of two pieces of mail addressed to Andrew from the Illinois Department of Human Services. (R. 81-83; St. Ex. 6-7)

After the tactical team finished searching the house, officers transported Andrew to the Chicago Police Department's 10th District station. (R. 60) There, after receiving *Miranda* warnings again, Andrew agreed to answer questions from Gama and Bolanos. (R. 60-61) Bolanos testified that during the interrogation, Andrew said he had purchased the recovered Benelli shotgun from a co-worker for $100 and a lunch. (R. 61, 76) Gama inventoried the shotgun, assigning it a unique inventory number. (R. 79) The prosecution did not introduce the Benelli shotgun at trial. (R. 33-90)

Regarding the defacement issue, the parties stipulated that the serial number on the Benelli shotgun "had been changed, altered, removed, or obliterated." (R. 88) The prosecution presented no evidence directly addressing whether Andrew knew the shotgun's serial number had been defaced. (R. 33-90)

The defense presented no evidence during its case-in-chief. (R. 89-90) During closing argument, Andrew argued that the prosecution failed to meet its burden of proving that he constructively possessed the shotgun. (R. 90-100)

The trial court found Andrew guilty of the charged offense, concluding that the evidence "conclusively" proved possession. (R. 103) In doing so, the court stated that the prosecution was not required to prove that Andrew knew the firearm

had been defaced, citing *People v. Lee*, 2018 IL App (1st) 162563.[4] (R. 103)

Andrew filed a posttrial motion, which the trial court denied. (Sec. C. 96-114; R. 126) The court sentenced Andrew to two years of probation. (C. 46-47; 136-37)

On appeal, Andrew raised two issues. First, Andrew contended that the evidence was insufficient to prove him guilty because the prosecution did not establish that he knew the Benelli shotgun was defaced. Relying primarily on Justice Ellis's special concurrence in *Lee*, along with this Court's reasoning in *People v. Gean*, 143 Ill. 2d 281 (1981), Andrew argued that knowledge of the defacement was an element of the offense that the prosecution had to prove beyond a reasonable doubt. Alternatively, Andrew asserted that he should receive a new trial because the trial court's comments demonstrated a misunderstanding of the law about the elements the prosecution was required to prove in order to secure a conviction for possession of a defaced firearm.

In a Rule 23 order, the appellate court affirmed the conviction, relying on its earlier opinions holding that defacement is not an element of the offense. *People v. Ramirez*, 2021 IL App (1st) 191392-U, ¶¶ 16-23. Consequently, the appellate court reasoned, the prosecution did not need to prove that Andrew knew the shotgun was defaced. *Id.* at ¶ 21. Andrew filed a timely petition for rehearing, which the appellate court denied.

This Court granted leave to appeal on March 30, 2022.

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[4] The appellate court subsequently withdrew its 2018 opinion in *Lee* and issued a superseding opinion. *See People v. Lee*, 2019 IL App (1st) 162563.

ARGUMENT

I. This Court should reverse outright Andrew Ramirez's conviction for possession of a defaced firearm because the prosecution failed to prove beyond a reasonable doubt that Andrew knew the serial number on the recovered Benelli shotgun was defaced.

In the Anglo-American legal tradition, a felony is " 'as bad a word as you can give to man or thing.' " *Morissette v. United States*, 342 U.S. 246, 260 (1952) (quoting 2 Pollock & Maitland, *History of English Law* 465 (1895)). Andrew Ramirez is a devoted son, father, sibling, and uncle who is trusted as a mentor in his community. (Sec. C. 78-80; R. 128-34) But because he was convicted of possession of a defaced firearm (720 ILCS 5/24-5(b) (2018)), he is now labeled as a convicted felon. Andrew has been assigned this stigmatizing designation even though the prosecution presented no evidence at his bench trial establishing that he knew the serial number on the 20-gauge shotgun recovered from his home was indeed defaced. (R. 33-90)

The text of the possession of a defaced firearm statute includes no mental state requirement. At Andrew's bench trial, the trial court relied on a line of appellate court decisions, originating with *People v. Stanley*, 397 Ill. App. 3d 598, 609 (1st Dist. 2009), holding that the prosecution does not have to prove that the defendant knew the firearm was defaced. (R. 103) The appellate court affirmed Andrew's conviction and reaffirmed *Stanley*. *People v. Ramirez*, 2021 IL App (1st) 191392-U, ¶¶ 16-23.

The appellate court has misconstrued the possession of a defaced firearm statute. Contrary to *Stanley* and its progeny, defacement is undeniably an element of the offense that the prosecution must prove beyond a reasonable doubt. Simply

put, defacement is the fact that separates constitutionally protected conduct from criminal conduct and permits punishing violators as felons. Furthermore, possession of a defaced firearm is not an absolute liability offense, and a defendant is not guilty unless he has a culpable *mens rea* of knowledge as to every element, including the firearm's defacement. Applying this *mens rea* to the defacement element protects innocent actors from liability for unknowingly engaging in illegal conduct. Construing the statute any other way runs afoul of the interpretive rules in Title II, Article 4 of the Criminal Code and Illinois and federal decisional law, as well as the principle of constitutional avoidance. Yet that is what *Stanley* does. This Court should overrule this erroneous line of cases.

That is not all. The prosecution here failed to prove that Andrew knew about the Benelli shotgun's defacement. This Court should therefore reverse outright his conviction.

Due process requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); U.S. Const. amend. XIV; Ill. Const. 1970, art. 1, § 2. Reviewing courts ask whether, considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48. A conviction must be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999).

Whether the prosecution must prove a defendant's knowledge of defacement to obtain a conviction for possession of a defaced firearm is a question of statutory

construction. This Court reviews questions of statutory construction *de novo*. *People v. Jones*, 223 Ill. 2d 569, 580 (2006). The primary objective of statutory construction is to determine and give effect to the intent of the legislature. *Id*. Legislative intent is determined by examining the text of the statute, which is the most reliable indicator of the legislature's objectives in enacting a particular law. *Id*. at 580-81. The text is to be given its plain, ordinary, and popularly understood meaning. *Id*. at 581. Where a statute is clear and unambiguous, a court shall not resort to other aids of construction. *Id*. Statutes are construed as a whole so that no part is rendered meaningless and superfluous. *Id*. When construing criminal statutes, the rule of lenity requires that any ambiguity must be resolved in favor of the accused, so long as doing so does not defeat the legislature's intent. *Id*. All statutes are presumed to be constitutionally valid. *People v. Deleon*, 2020 IL 14744, ¶ 6. It is a reviewing court's duty to construe a statute in a manner that upholds the statute's constitutionality, if such a construction is reasonably possible. *Id*.

A. To convict Andrew of possession of a defaced firearm, the prosecution had to prove beyond a reasonable doubt that he knew the firearm was defaced.

As written, section 24-5(b) contains no *mens rea* requirement. But this does not mean possession of a defaced firearm is an absolute liability offense. Here, because the legislature did not intend to create an absolute liability offense, *Stanley* correctly concluded that there is an implied *mens rea* of knowledge in the possession of a defaced firearm statute. But contrary to *Stanley* and its progeny, defacement is an element of the offense, and the prosecution must prove a defendant knew of a firearm's defacement to secure a conviction under section 24-5(b).

1. ***Although the text of section 24-5(b) of the Criminal Code contains no explicit mental state, possession of a defaced firearm is not an absolute liability offense. The statute requires a knowing mens rea.***

Section 24-5 of the Criminal Code provides, in relevant part:

> (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.

720 ILCS 5/24-5(a), (b) (2018). The legislature created the offense of possession of a defaced firearm in Public Act 93-906 while revising section 24-5 of the Criminal Code. Pub. Act 93-906 (eff. Aug. 11, 2004).

The impetus for the revision – and the creation of the new Class 3 offense of possession of a defaced firearm – was a constitutional flaw in the previous statute identified in *People v. Quinones*, 362 Ill. App. 3d 385 (1st Dist. 2005). The prior version of section 24-5(b) provided that possession of a defaced firearm was *prima facie* evidence that the possessor was the one who made the prohibited alteration. 720 ILCS 5/24-5(b) (2002). *Quinones* declared this provision unconstitutional because it created a mandatory presumption of guilt and relieved prosecutors of their burden to prove every element of the offense beyond a reasonable doubt. *Quinones*, 362 Ill. App. 3d at 394.

The current version of section 24-5(b) states no explicit *mens rea* requirement. 720 ILCS 5/24-5(b) (2018). But this fact alone is not dispositive of whether possession of a defaced firearm is an absolute liability offense. "The mere absence of express language describing a mental state does not *per se* lead to the conclusion that

none is required." *People v. Valley Steel Prods. Co.*, 71 Ill. 2d 408, 424 (1978) (citing *Morissette*, 342 U.S. at 263); *People v. Sroga*, 2022 IL 126978, ¶ 16 (same).

" '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. U.S. Gypsum Co.*, 438 U.S. 422, 436 (1978)). The common law viewed crime as a "compound concept, generally constituted only from concurrence of an evil-meaning mind with an evil-doing hand." *Morissette*, 342 U.S. at 251. Blackstone characterized the showing of a "vicious will" as a necessary prerequisite for any act to constitute a crime. *Id.* at 251; *see* 4 W. Blackstone, *Commentaries on the Laws of England* 21 (1769).

This concept "took deep and early root in American soil." *Morissette*, 342 U.S. at 251-52. Justice Robert H. Jackson declared the *mens rea* requirement to be "universal and persistent" in mature legal systems:

> A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory "But I didn't mean to," and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution.

Id. at 250-51.

The Supreme Court has repeatedly emphasized the importance of *mens rea* in separating wrongful from innocent acts. *Rehaif v. United States*, 588 U.S. ----, 139 S. Ct. 2191, 2196-97 (2019); *Staples*, 511 U.S. at 610; *Liparota v. United States*, 471 U.S. 419, 425 (1985); *United States v. Bailey*, 444 U.S. 394, 406, n. 6 (1980); *U.S. Gypsum Co.*, 438 U.S. at 436. Thus, in cases of statutory construction, federal reviewing courts apply a presumption in favor of requiring a defendant to possess a culpable mental state regarding each of the elements that criminalize

otherwise innocent conduct. *Rehaif*, 139 S. Ct. at 2195 (quoting *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1994)); *Morissette*, 342 U.S. at 256-58. Courts apply this presumption even when construing statutes that have no mental state specified at all in the text. *Rehaif*, 139 S. Ct. at 2195 (citing *Staples*, 511 U.S. at 606).

Illinois law likewise views *mens rea* as the rule, rather than the exception, in our state's criminal law. This Court has repeatedly said that it will infer a mental state requirement whenever possible when construing a statute without an express mental state. *Sroga*, 2022 IL 126978, ¶ 17 (citing *People v. Witherspoon*, 2019 IL 123092, ¶ 30 and *People v. O'Brien*, 197 Ill. 2d 88, 92 (2001)).

These default preferences are codified in our statutory law. One of the legislature's express purposes in creating the Criminal Code was to "[d]efine adequately the act and mental state which constitute each offense, and limit the condemnation of conduct as criminal when it is without fault." 720 ILCS 5/1-2(b) (2018). To that end, Title II, Article 4 of the Criminal Code establishes foundational principles of criminal liability that apply throughout the Code. *See* 720 ILCS 5/4-1 *et seq*. – 5/4-9 *et seq*. (2018). Those principles are the starting point for analyzing whether a culpable mental state is required for liability, and if so, what it is.

Section 4-3 delineates the default rules for culpable mental states, providing, in relevant part:

> (a) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in Sections 4-4 through 4-7 [i.e., intent, knowledge, recklessness, negligence].
>
> (b) If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without

> distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state defined in Sections 4-4, 4-5 or 4-6 [i.e., intent, knowledge, recklessness] is applicable.

720 ILCS 5/4-3 (2018). Section 4-9 sets the parameters for absolute liability:

> A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in Sections 4-4 through 4-7 if the offense is a misdemeanor which is not punishable by incarceration or by a fine exceeding $1,000, or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

720 ILCS 5/4-9 (2018). The committee comments to section 4-9 further demonstrate the legislature's intent to limit the scope of absolute liability. *People v. Gean*, 143 Ill. 2d 281, 285 (1991). Those comments say that when statutes contain no *mens rea* and lack clear legislative intent to create an absolute liability offense, "a mental state requirement should be implied as an application of the general rule that an offense consists of an act accompanied by a culpable mental state." *Id.* at 285-86 (quoting Ill. Ann. Stat., ch. 38, ¶ 4-9, Committee Comments, at 226-28 (Smith-Hurd 1989)). Section 4-9 applies to all criminal penalty provisions, including those outside the Criminal Code. *Id.* at 285.

This Court has not previously interpreted section 24-5(b) to determine whether possession of a defaced firearm is an absolute liability offense. The answer to this question is no.

Under the Criminal Code's default rules, section 24-5(b) is an absolute liability crime only if there is a clear legislative intent to create such an offense. *See* 720 ILCS 5/4-9; *Gean*, 143 Ill. 2d at 285-86. To make that determination, courts consider three factors: (1) the plain statutory language; (2) the comparative severity of

the potential penalty; and (3) a reading of the statute in the context of related provisions. *Sroga*, 2022 IL 126978, ¶ 30.

Applying this analysis reveals no such clear legislative intent to impose absolute liability for possession of a defaced firearm. Only the third factor could arguably suggest legislative intent to create absolute liability. Andrew acknowledges that section 24-5(b) includes no explicit mental state, while section 24-5(a) does. *Compare* 720 ILCS 5/24-5(a) (2018) *with* 720 ILCS 5/24-5(b) (2018).

But the first and second factors overshadow the third factor here, and forestall any clear intent to impose absolute liability. Regarding the first factor, the text of section 24-5(b) lacks any language imposing a mandatory obligation, such as the word "shall." *Cf. Sroga*, 2022 IL 126978, ¶¶ 31-33 (emphasizing that presence of word "shall" in text of section 3-703 of the Vehicle Code (625 ILCS 5/3-703), which indicated clear legislative intent to create absolute liability offense); *O'Brien*, 197 Ill. 2d at 93 (emphasizing that legislature's selection of word "shall" in section 3-707 of Vehicle Code (625 ILCS 5/3-707), which evinced clear intent to create absolute liability offense).

More importantly, the second factor, severity of penalty, weighs heavily against intent to make section 24-5(b) an absolute liability offense. *Sroga* characterized the severity of the penalty as the "critical" factor in this analysis. *Sroga*, 2022 IL 126978, ¶ 20; *see also X-Citement Video*, 513 U.S. at 71-72 (concluding that harsh penalties attaching to violations of a criminal statute, such as prison time and substantial fines, are a " 'significant consideration in determining whether the statute should be construed as dispensing with *mens rea*' ") (quoting *Staples*, 511 U.S. at 616). The legislature is unlikely to intend absolute liability where

the penalty is severe. *Sroga*, 2022 IL 126978, ¶ 20 (citing *Gean*, 143 Ill. 2d at 287).

Here, possession of a defaced firearm is a Class 3 felony. 720 ILCS 5/24-5(b) (2018). Class 3 felonies carry possible prison terms of up to five years and a fine of up to $25,000. 730 ILCS 5/5-4.5-40(a), (e) (2018); 730 ILCS 5/5-4.5-50(b) (2018). This is undeniably a severe penalty. *See Gean*, 143 Ill. 2d at 287 (finding that "a potential prison sentence of three years and a fine up to $10,000 is a substantial penalty"); *Sroga*, 2022 IL 126978, ¶ 21 (concluding that potential penalty for a Class A misdemeanor in the Vehicle Code "must be considered substantial") (citing *People v. Nunn*, 77 Ill. 2d 243, 249 (1979)). As this Court has repeatedly noted, "[i]t would be unthinkable to subject a person to a long term of imprisonment for an offense he might commit unknowingly." *Valley Steel Prods.*, 71 Ill. 2d at 425 (citing *Morisette* at 256, 260-61, 270-71); *People v. Farmer*, 165 Ill. 2d 194, 206 (1995); *Gean*, 143 Ill. 2d at 287; *Sroga*, 2022 IL 126978, ¶ 20 (quoting *Gean*).

Because there is no clear legislative intent to create an absolute liability offense, section 24-5(b) must be read to include a *mens rea*. 720 ILCS 5/4-3(b) (2018); 720 ILCS 5/4-9 (2018); *Gean*, 143 Ill. 2d at 285-86 (quoting Ill. Ann. Stat., ch. 38, ¶ 4-9, Committee Comments, at 226-28 (Smith-Hurd 1989)). And under the rules set forth in Title II, Article 4 of the Criminal Code, possession of a defaced firearm requires at least a knowing *mens rea*, since it is a possessory offense. *See* 720 ILCS 5/4-2 (2018) ("Possession is a voluntary act if the offender knowingly 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."); *see also Gean*, 143 Ill. 2d at 288 (knowledge is the appropriate mental state to infer for offenses of possession of salvage certificates "without authority" or "without complete assignment").

This is the result the appellate court reached in *Stanley*. Applying section 4-9 of the Criminal Code, *Stanley* found no clear legislative intent to make section 24-5(b) an absolute liability crime, noting this was a possessory offense that imposed Class 3 felony liability for violators. *Id*. at 606-07. *Stanley* then applied section 4-3(b) of the Criminal Code and concluded that the prosecution could establish the elements of the offense with either a knowing or intentional mental state. *Id*. at 607 (citing 720 ILCS 5/4-3(b) (2006)).

One additional consideration favors concluding that section 24-5(b) is not an absolute liability offense: the doctrine of constitutional avoidance. *Deleon*, 2020 IL 124744, ¶ 6. When possible, a statute should be construed in a manner that upholds its constitutionality. *Id*. Firearm possession is a constitutionally protected right. U.S. Const. amends. II, XIV; Ill. Const. 1970, art. 1, § 22; *District of Columbia v. Heller*, 544 U.S. 570, 635 (2008); *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). This brief will elaborate further on the second amendment considerations at play when construing section 24-5(b), but suffice it to say for now that interpreting section 24-5(b) to include a *mens rea* ensures that the statute is constitutional.

2. *Defacement is an element of the offense of possession of a defaced firearm. This Court should overrule People v. Stanley's holding reaching the opposite conclusion.*

Stanley held that possession of a defaced firearm is not an absolute liability offense, and inferred a *mens rea* of at least knowledge to the statute. *Stanley*, 397 Ill. App. 3d at 605-07. This part of *Stanley* is correct. But the remainder of *Stanley*'s construction of section 24-5(b) is incorrect, including its conclusion that defacement is not an element of the offense. Contrary to *Stanley*, statutory and constitutional mandates, along with foundational principles regarding criminal culpability, require

defacement to be an element.

According to *Stanley*, the elements of the offense are limited to "the *mens rea* and the possession." *Id*. at 609. In other words, *Stanley* concluded that the prosecution must prove only "the knowing possession of the defaced firearm by [the] defendant." *Id*. *Stanley* expressly held that while defacement "unmistakably bears upon the commission of the offense, it is not an element of the offense." *Id*. As support for this construction, *Stanley* cited a passage from the committee comments to section 4-9 of the Criminal Code, which states that "a mental-state requirement should be implied as an application of the general rule that an offense consists of an act accompanied by a culpable mental state, as expressed in 4-3." *Id*. (quoting 720 ILCS 5/4-9, Committee Comments – 1961, at 220 (Smith-Hurd 2002)). Since *Stanley*, the appellate court has reaffirmed this interpretation multiple times. *See People v. Falco*, 2014 IL App (1st) 111797, ¶ 18; *People v. Lee*, 2019 IL App (1st) 162563, ¶ 40. The appellate court did so again in Andrew's case. *People v. Ramirez*, 2021 IL App (1st) 191392-U, ¶¶ 16-20.[5]

On this point, *Stanley* and its progeny are wrong and must be overruled. Defacement is – and must be – an element of the offense of possession of a defaced firearm. Justice Ellis reached this conclusion in *Lee*, and wrote a special concurrence providing two reasons why defacement has to be an element.

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[5] Andrew's case is not the first time the appellate court has applied *Stanley*'s interpretation of section 24-5(b) in a Rule 23 order. This has happened at least six other times. *See People v. Jackson*, 2017 IL App (1st) 150677-U, ¶ 44; *In Interest of S.D.*, 2017 IL App (1st) 171007-U, ¶ 26; *In Interest of Sebeyoun W.*, 2016 IL App (1st) 161778-U, ¶ 16; *People v. Guy*, 2012 IL App (1st) 110248-U, ¶ 17; *People v. Washington*, 2012 IL App (1st) 102029-U, ¶ 24; *People v. Ferrell*, 2011 IL App (4th) 100331-U, ¶ 17.

First, says Justice Ellis, *Stanley*'s reasoning regarding the elements of the offense is unsound as a matter of logic:

> In the parlance of the Criminal Code, [defacement] is an "attendant circumstance" of an individual's conduct. See 720 ILCS 5/4-5(a) (West 2016). If the defacement were not an element, the State wouldn't have to prove it at all. It could prove possession of a *defaced* firearm simply by proving possession of *any* firearm, defaced or not. That would be absurd. And we cannot avoid that absurdity by purporting to distinguish, as *Stanley* did, between an element and a fact that "unmistakably bears upon the commission of the offense." *Stanley*, 397 Ill. App. 3d at 609, 336 Ill. Dec. 831, 921 N.E. 2d 445. It "unmistakably bears upon" the crime, but it's not an element – it's not something the State has to prove? It's just an interesting detail? That phrase is just a muddled, evasive way to refer to an element of the offense, which, in plainer terms, is simply a fact for which the statute requires proof beyond a reasonable doubt.

Lee, 2019 IL App (1st) 162563, ¶ 83 (Ellis, J., specially concurring) (emphasis in original).

There is no dispute that the prosecution must prove defacement beyond a reasonable doubt to secure a conviction. This essential fact is an element of the offense. *See Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Hill v. Cowan*, 202 Ill. 2d 151, 158 (2002) (noting *Apprendi* requires the prosecution to prove to the jury beyond a reasonable doubt all facts underlying the sentence imposed on the defendant); *see also* Black's Law Dictionary, *Element* (11th ed. 2019) (defining "element" as a "constituent part of a claim that must be proved for the claim to succeed").

Justice Ellis's second point in the special concurrence to *Lee* invokes the duty of reviewing courts to avoid constructions that raise doubts about a statute's constitutionality. A fundamental flaw in *Stanley*'s construction of section 24-5(b) is that it infringes upon the constitutional right to bear arms. *See* U.S. Const. amends. II, XIV; Ill. Const. 1970, art. 1, § 22; *Heller*, 544 U.S. at 635; *McDonald*,

561 U.S. at 791. Justice Ellis explains why:

> Possession of a firearm, by itself, is not a crime. Nor is knowing possession of a firearm. Indeed, any statute that criminalized the knowing possession of a firearm – full stop, without more – would clearly violate the second amendment, as interpreted in *McDonald v. City of Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed. 2d 894 (2010), and *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed. 2d 637 (2008).

Lee, 2019 IL App (1st) 162563, ¶ 85 (Ellis, J., specially concurring); *see also People v. Aguilar*, 2013 IL 112116, ¶¶ 16-17 (acknowledging the holdings of *Heller* and *McDonald*).

In other words, defacement must be an element to make the possession of a defaced firearm statute constitutional:

> To define a *constitutionally permissible* offense, another element is necessary – some fact about the firearm or the circumstances of its possession that the second amendment does not protect. Defacement is one example of such an additional fact. Thus, in the statute we are considering, the defacement is more than just an element, on par with any other; it is the element that *allows the legislature to enact this offense in the first place* without being blatantly unconstitutional. The additional fact of defacement is the *only* thing in this statute that validly makes the firearm possession a crime.

Lee, 2019 IL App (1st) 162563, ¶ 86 (Ellis, J., specially concurring) (emphases in original).

Stanley overlooks this interplay between the right to bear arms and the possession of a defaced firearm statute. So do the three cases *Stanley* relies upon to hold that defacement is not an element: *People v. Ivy*, 133 Ill. App. 3d 647, 652-54 (5th Dist. 1985); *People v. Wright*, 140 Ill. App. 3d 576, 582 (1st Dist. 1986); and *State v. Smith*, 963 A. 2d 281, 282-289 (N.J. 2009). *See Stanley*, 397 Ill. App. 3d at 607-08 (citing *Ivy*, *Wright*, and *Smith*). *Ivy* and *Wright*, which interpreted the statute criminalizing the possession of a sawed-off shotgun, both predate *Heller*

and *McDonald*. When the New Jersey Supreme Court decided *Smith*, which interpreted that state's possession of a defaced firearm statute, it omitted second amendment considerations from its analysis, even though *Heller* had been decided the year before. *Smith*, 963 A. 2d at 282-89.

Moreover, the right to bear arms is not the only constitutional right implicated by *Stanley*'s erroneous construction. Andrew and others charged with possession of a defaced firearm possess a due process right to be proven guilty of every element beyond a reasonable doubt. U.S. Const. amend. XIV; Ill. Const. 1970 art. 1, § 2; *Jackson*, 443 U.S. at 316; *Apprendi*, 530 U.S. at 490; *In re Winship*, 397 U.S. 358, 364 (1970). *Stanley* relieves the prosecution of this burden, even though defacement is a fact necessary to establishing a violation of the offense. Thus, *Stanley*'s construction imposes the constitutional problem that *Quinones* eliminated in the predecessor version of section 24-5(b). *Cf. Quinones*, 362 Ill. App. 3d at 394.

3. *The knowledge mens rea applies to the defacement element.*

Because the text of section 24-5(b) includes no express *mens rea* requirement, an additional question must be resolved: to which elements of the offense does the implied mental state of knowledge apply? This Court should hold that the prosecution must prove a defendant knew that the firearm he possessed was defaced.

Title II, Article 4 of the Criminal Code mandates this result. Under the Criminal Code, if a statute prescribes a mental state with respect to the offense as a whole, that *mens rea* is read to apply to every element. 720 ILCS 5/4-3(b) (2018). Thus, section 24-5(b)'s implied *mens rea* of knowledge applies to every element of the offense. *See id*. As Andrew has already demonstrated, defacement is an element of the offense. Therefore, under section 4-3(b), the implied knowledge

requirement applies to the defacement element.

Stanley recognized the relevance of section 4-3(b) to this step in construing the possession of a defaced firearm statute. Indeed, *Stanley* acknowledged that since possession of a defaced firearm had an implied *mens rea* of knowledge, section 4-3(b) "could arguably be read to require proof defendant knew of the nature of the defaced firearm." *Stanley*, 397 Ill. App. 3d at 609. *Stanley* avoided this conclusion by holding that defacement is not an element of the offense. Yet as Andrew has shown, *Stanley* is incorrect on this point. *See also Lee*, 2019 IL App (1st) 162563, ¶ 82 (Ellis, J., specially concurring) (characterizing *Stanley*'s reasoning as "indefensible").

Even if the Criminal Code did not compel this construction, applying section 24-5(b)'s implied knowledge requirement to the defacement element would nevertheless be the soundest way to interpret the statute. Doing so draws a bright line between lawful and unlawful conduct, thereby protecting innocent actors. As Justice Ellis correctly observed in *Lee*, if section 24-5(b) did not require knowledge of defacement, "the defendant's otherwise innocent conduct (knowingly possessing a firearm) would be transformed into a felony by a circumstance (the defacement) of which he was unaware." *Lee*, 2019 IL App (1st) 162563, ¶ 87 (Ellis, J., specially concurring).

Such a construction is consistent with the foundational principle of criminal law requiring a mental state to separate those who understand the wrongful nature of their conduct from those who do not. And it finds support in precedent from both this Court and the Supreme Court.

One example is *People v. Gean*, where this Court interpreted a "chop shop"

statute aimed at prohibiting receipt of stolen vehicles. *Gean*, 143 Ill. 2d at 289. The provisions at issue in *Gean*, like the possession of a defaced firearm statute here, included no explicit *mens rea* requirements. *Id*. at 283-84 (quoting Ill. Rev. Stat. 1987, ch. 95 ½,¶ 4-104). This Court inferred a *mens rea* of knowledge and held that the prosecution must prove the defendant possessed the certificates at issue knowing that he was doing so "without authority" or "without complete assignment." *Id*. at 288-89. Under this construction, knowledge that the vehicle in question was stolen differentiated innocent conduct from criminal conduct. *See id*. By contrast, if *Gean* had inferred the *mens rea* only to the possession of a car title, it would lead to the absurd result that "every car owner in Illinois would be a criminal." *Lee*, 2019 IL App (1st) 162563, ¶ 91 (Ellis, J., specially concurring). The *Stanley* line of cases overlooks *Gean*. *See Stanley*, 397 Ill. App. 3d at 607-09.

Staples, a United States Supreme Court decision, is also instructive. There, federal authorities seized from defendant's home an AR-15 rifle that had been modified to be capable of fully-automatic fire. *Staples*, 511 U.S. at 603. This modification made the firearm a "machinegun" for the purposes of the National Firearms Act, which meant the gun had to be registered with the federal government. *Id*. at 602. Because the rifle was unregistered, defendant was charged with violating 26 U.S.C. § 5861(d), a felony punishable by up to 10 years in prison. *Id*. at 603. Like the Illinois possession of a defaced firearm statute, section 5861(d)'s statutory text included no *mens rea*. *Id*. at 605. At issue in *Staples* was whether section 5861(d) required the government to prove that defendant knew of the characteristics of the weapon that made it subject to registration under the National Firearms Act. *Id*. at 602.

The Supreme Court said yes, finding no legislative intent to create an absolute liability offense, and reasoning that implying a knowing *mens rea* separated wrongful from innocent acts. *Id*. at 605-19. *Staples* rejected the government's argument that since firearms are dangerous devices, section 5861(d) was a public welfare offense that warranted absolute liability status. *Id*. at 608-19. The Court acknowledged that firearms are potentially harmful and heavily regulated, but found those facts insufficient to deem section 5861(d) a public welfare offense given the "long tradition of widespread lawful gun ownership by private individuals in this country." *Id*. at 610. "Roughly 50 percent of American homes contain at least one firearm of some sort," *Staples* observed, "and in the vast majority of States, buying a shotgun or rifle is a simple transaction that would not alert a person to regulation any more than would buying a car." *Id*. at 613-14.

Thus, *Staples* concluded there "can be little doubt" that if section 5861(d) was an absolute liability offense, the statute "potentially would impose criminal sanctions on a class of persons whose mental state – ignorance of the characteristics of weapons in their possession – makes their actions entirely innocent." *Id*. at 614-15. Such a construction would have subjected "any person who has purchased what he believes to be a semiautomatic rifle or handgun, or who simply has inherited a gun from a relative and left it untouched in an attic or basement * * * to imprisonment, despite absolute ignorance of the gun's firing capabilities, if the gun turns out to be an automatic." *Id*. at 615. As further support for requiring knowledge of the firearm's illegal characteristic, *Staples* noted the "harsh" punishment for violating the statute. *Id*. at 616. *Stanley* overlooks *Staples*. *See Stanley*, 397 Ill. App. 3d at 607-09.

Twenty-five years after *Staples*, in *Rehaif*, the Supreme Court applied the same reasoning to require a knowing mental state to the status element of two federal firearm possession statutes, 18 U.S.C. §§ 922(g) and 924(a)(2). Those statutes prohibit felons and noncitizens "illegally or unlawfully in the United States" from possessing firearms. *Rehaif*, 139 S. Ct. at 2194. The text of section 924(a)(2) includes a knowing mental state requirement; the statutory construction question was what elements of the offense this *mens rea* modified. *Id*. *Rehaif* held that it included the status element, meaning that in section 922(g) and 924(a)(2) prosecutions, the government must prove the defendant knows of his status as a person barred from possessing a firearm. *Id*.

Thus, in *Rehaif*, the government had to prove beyond a reasonable doubt that defendant, a noncitizen who possessed firearms while in the United States after his student visa had expired, knew he was unlawfully in the country. *Id*. at 2194-95. Since firearm possession can be entirely innocent, the defendant's status as a noncitizen illegally in the country is "the crucial element separating innocent from wrongful conduct." *Id*. at 2197. "Without knowledge of that status, the defendant may well lack the intent needed to make his behavior wrongful," *Rehaif* reasoned. *Id*. "His behavior may instead be an innocent mistake to which criminal sanctions normally do not attach." *Id*. (citing O. Holmes, *The Common Law* 3 (1881) ("even a dog distinguishes between being stumbled over and being kicked")). Moreover, given the potential 10-year prison sentence that accompanies the offense, *Rehaif* rejected the government's argument that this offense was a public welfare crime justifying absolute liability. *Id*.

Similar risks exist here if section 24-5(b) does not require the defendant's

knowledge of a firearm's defacement. Private gun ownership has a long tradition in American life. *Staples*, 511 U.S. at 610. It is also constitutionally protected conduct. U.S. Const. amends. II, XIV; Ill. Const. 1970, art. 1, § 22; *Heller*, 544 U.S. at 635 (2008); *McDonald*, 561 U.S. at 791). Yet under *Stanley*'s construction, an innocent actor ignorant of a possessed firearm's defacement can "wander inadvertently into a felony – due to circumstances beyond his knowledge – while he was doing something that was otherwise legal." *Lee*, 2019 IL App (1st) 162563, ¶ 96 (Ellis, J., specially concurring); *see also Staples*, 511 U.S. at 615-61 (declining to construe 26 U.S.C. § 5861(d) as an absolute liability offense because "it would mean easing the path to convicting persons whose conduct would not even alert them to the probability of strict regulation").

This is a significant danger. Less sophisticated gun owners may lack the skill to discern whether a firearm's identification marks have been defaced, particularly where the defacement consists of changes or alterations to the serial number. *See* 720 ILCS 5/24-5(b) (2018) (firearm is defaced when its serial number has been changed, altered, removed, or obliterated). Others may not even know where to look to find the serial number on a firearm. *See* Michigan State Police Criminal Justice Information Center, *Firearms Identification Field Guide* 4-34 (providing diagrams demonstrating the significant variation in serial number location and nomenclature among different models of handguns).[6] And even sophisticated, knowledgeable gun owners are not immune from innocent mistakes that result from overlooking a firearm's illegal characteristic. *See Staples*, 511 U.S. at 615 (providing example of the legatee "who simply has inherited a gun

[6] https://www.michigan.gov/documents/Firearms_Guide_98674_7.pdf [https://perma.cc/ZX48-TF8R]

from a relative and left it untouched in an attic or basement").

Nevertheless, as a Class 3 felony, section 24-5(b) can subject innocent actors to five years in the penitentiary and a fine of up to $25,000. 720 ILCS 5/24-5(b) (2018); 730 ILCS 5/5-4.5-40(a), (e) (2018); 730 ILCS 5/5-4.5-50(b) (2018).

Nor is that all the innocent actor faces under *Stanley*. A conviction for violating section 24-5(b) carries more than the possibility of prison time and a fine. It guarantees being labeled a convicted felon, a fundamentally life-changing status that saddles its recipients with permanent legal and extralegal disabilities. These *de jure* and *de facto* restrictions and disqualifications limit individuals convicted of a felony from functioning and participating in society. *See Morrissey v. Brewer*, 443 F. 2d 942, 952-53 (8th Cir. 1971) (en banc) (Lay, J., dissenting), *rev'd*, 408 U.S. 471 (1972) (noting that society views a person convicted of a felony as a "social outcast" and "marked man" who is "brand[ed] * * * as virtually unemployable" and "required to live with his normal activities severely restricted"). Collateral consequences to a felony conviction are numerous, and include barriers to civic participation, employment, housing, education, and other domains of public and private life. These consequences have spillover effects on family members and communities. *E.g.*, United States Commission on Civil Rights, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities* (2019).[7]

Here is a sampling of how the collateral consequences of Andrew's felony conviction can affect him and his family in ways large and small. That conviction renders Andrew ineligible from holding public office in Illinois. Ill. Const. 1970,

[7] https://www.usccr.gov/files/pubs/2019/06-13-Collateral-Consequences.pdf [https://perma.cc/R7LZ-J72P].

art. XIII, § 1. He is barred from serving as a notary public in this state. 5 ILCS 312/2-102(a)(11) (2022). Andrew is presumptively disqualified from serving as a guardian in Illinois. 755 ILCS 5/11a-5(a)(5) (2022). He will never be able to serve as an executor for a family member, a friend, or anyone else. 755 ILCS 5/6-13(a) (2022). Andrew's felony conviction prevents him from possessing firearms. 720 ILCS 5/42-1.1(a) (2022); 430 ILCS 65/8(c) (2022). When Andrew applies for a job, the stigma of a felony firearms conviction may prompt prospective employers to conclude that he is untrustworthy, lacking job readiness, or a civil-liability risk. *See* United States Commission on Civil Rights, *Collateral Consequences* at 36, 41. That same stigma could limit Andrew's options in the housing market when he searches for a place to live. *See id*. at 73. It could also interfere with future efforts to obtain further education, since data suggests that postsecondary institutions use criminal backgrounds to influence admissions decisions. *See id*. at 86.

None of these collateral consequences are unique to Andrew. Under *Stanley* and its progeny, anyone who innocently possesses a defaced firearm will likewise have their lives transformed for the worse, regardless of whether they knew of the characteristic that made possessing their firearm a felony. Justice Ellis remarked in his *Lee* special concurrence that "if a person can be made to wander into felony liability unwittingly, just by engaging in otherwise innocent conduct, then the felony liability imposed by the statute is 'absolute' or 'strict,' indeed." *Lee*, 2019 IL App (1st) 162563, ¶ 87 (Ellis, J., specially concurring). This is even truer when one considers the collateral consequences that accompany that felony liability.

Construing section 24-5(b) to require a defendant's knowledge of the firearm's

defacement would be in line other jurisdictions that criminalize the possession of such weapons. *Stanley* and its progeny make Illinois an outlier when it comes to *mens rea* requirements.

The general trend across the country is that possession of a defaced firearm statutes require proof that the possessor knew of the defacement. In some jurisdictions, the knowledge requirement is expressly included in the text of the relevant statute. *E.g.*, Alaska Stat. §§ 11.46.270(a), 11.61.200(a)(6); Ariz. Rev. Stat. Ann. § 13-3102(A)(7); Cal. Penal Code § 23920; Del. Code Ann. tit. 11 § 1459(a); Ga. Code Ann. § 16-9-70(b); Mass. Gen. Laws ch. 269, § 11C; Mont. Code Ann. § 45-6-326(1)(b); S.D. Codified Laws § 22-30A-39; Va. Code Ann. § 18.2-96.1(D).

Elsewhere, the knowledge requirement in state possession of a defaced firearm statutes has been confirmed via statutory construction. *E.g.*, *K.D.T. v. State*, 128 So. 3d 254, 256 (Fla. Dist. Ct. App. 2013) (interpreting Fla. Stat. Ann. § 790.27(2)(a)); *Cole v. State*, 69 N.E. 3d 552, 559 (Ind. Ct. App. 2017) (interpreting Ind. Code § 35-47-2-18(a)(2)); *Cobles v. State*, 758 N.E. 2d 581, 583 (Ind. Ct. App. 2001) (same); *Wagerman v. State*, 597 N.E. 2d 13, 16 (Ind. Ct. App. 1992) (same); *People v. Free*, 650 N.Y.S. 2d 257, 258 (N.Y. App. Div. 1996) (interpreting N.Y. Penal Law § 265.02(3)); *People v. Velasquez*, 528 N.Y.S. 2d 502, 503-04 (N.Y. Sup. Ct. 1988) (same); *Commonwealth v. Hill*, 210 A. 3d 1104, 1114-15 (Pa. Super. Ct. 2019) (interpreting 18 Pa. Stat. and Cons. Stat. Ann. § 6110.2(a)); *Commonwealth v. Jones*, 172 A. 3d 1139, 1144-45 (Pa. Super. Ct. 2017) (same).

Likewise, the federal circuit courts of appeals have uniformly construed the federal possession of a defaced firearm statute, 18 U.S.C. § 922(k), to require a knowing mental state for the defacement element. *See United States v. Abernathy*,

83 F. 3d 17, 19 n.1 (1st Cir. 1996); *United States v. Haynes*, 16 F. 3d 29, 33-34 (2d Cir. 1994); *United States v. Haywood*, 363 F. 3d 200, 206 (3d Cir. 2004); *United States v. Sullivan*, 455 F. 3d 248, 261 (4th Cir. 2006) (Widener, J., concurring and dissenting); *United States v. Hooker*, 997 F. 2d 67, 71-74 (5th Cir. 1993); *United States v. Cobbs*, 233 Fed. Appx. 524, 536 (6th Cir. 2007); *United States v. Rice*, 520 F. 3d 811, 818 (7th Cir. 2008); *United States v. Garcia-Hernandez*, 803 F. 3d 994, 998-99 (8th Cir. 2015); *United States v. Haile*, 685 F. 3d 1211, 1220 (11th Cir. 2012); *United States v. Fennell*, 53 F. 3d 1296, 1300-01 (D.C. Cir. 1995).

In fact, *Stanley* relied upon what may be the only reported decision where a reviewing court concluded that its state's possession of a defaced firearm statute did not require the prosecution to prove a defendant's knowledge of the defacement: *State v. Smith* from the New Jersey Supreme Court. *See Stanley*, 397 Ill. App. 3d at 607-08 (discussing *Smith*). Unlike section 24-5(b) of the Criminal Code, the New Jersey statute includes a *mens rea* – knowledge – in its text. *See* N.J. Stat. Ann. § 2C:39-3(d). In this sense, the New Jersey and Illinois statutes are distinguishable on their face.

A more apt comparison to section 24-5(b) is the Pennsylvania statute; both of these statutes include no *mens rea* element. *Compare* 720 ILCS 5/24-5(b) *with* 18 Pa. Stat. and Cons. Stat. Ann. § 6110.2(a). As a matter of statutory construction, the Pennsylvania statute requires prosecutors to prove a defendant's knowledge of the firearm's defacement. *Hill*, 210 A. 3d at 1114-15; *Jones*, 172 A. 3d at 1144-45.

Moreover, *Smith* is an outlier even among jurisdictions where statutory construction was required to determine whether the word "knowing" in the respective statute's text modified the defacement element. The New Jersey Supreme Court

said no; all of the other jurisdictions' reviewing courts reached the opposite conclusion. *Compare Smith*, 963 A. 2d at 289 *with K.D.T.*, 128 So. 3d at 256 (regarding Florida statute), *Free*, 650 N.Y.S. 2d at 258 (regarding New York statute), and *Fennell*, 53 F. 3d at 1300-01 (regarding federal statute).

Justice Ellis points to one additional reason why applying the knowing *mens rea* requirement to the defacement element: it avoids a construction that creates an absurd result. "If we don't infer a knowledge requirement into the part of the statute that renders the actor a criminal," Justice Ellis oberves, "we are imposing absolute liability for a Class 3 felony, without the requisite clear indication that the legislature attempted to do so." *Lee*, 2019 IL App (1st) 162563, ¶ 92 (Ellis, J., specially concurring). While *Stanley* recognized the legislature did not intend to create an absolute liability offense, that decision's reasoning creates the very result the appellate court sought to avoid. To avoid this absurd result, and for the other reasons discussed above, this Court should overrule *Stanley* and hold that the prosecution must prove a defendant knew that the firearm he possessed was defaced.

B. Because the prosecution presented no proof that Andrew knew the recovered Benelli shotgun was defaced, the evidence was insufficient to convict him of possession of a defaced firearm.

At trial, the prosecution presented evidence that a police officer recovered a 20-gauge Benelli shotgun during the execution of the warrant at Andrew's home. (R. 33-34, 49, 56-57; St. Ex. 3; St. Ex. 6 at T03:50:34Z-T03:50:39Z) The evidence established that Andrew was in the house when police executed the warrant. (R. 36-37; St. Ex. 1 at T03:35:15Z-T03:35:20Z) The prosecution introduced proof of residency and Andrew's statement to police that he bought the shotgun. (R. 61,

76; St. Ex. 6) The parties stipulated that the firearm was defaced. (R. 88) But the prosecution did not prove that Andrew knew the shotgun was defaced.

As Andrew has already established in this brief, the prosecution had the burden at trial to prove beyond a reasonable doubt that: (1) he possessed the Benelli shotgun; (2) the firearm was defaced; and (3) he knew the firearm was defaced. Here, there is no evidence that Andrew knew the Benelli shotgun he possessed in his home was defaced. The prosecution did not introduce the shotgun as evidence. (R. 33-90) While the recovering officer, Adolfo Bolanos, said the serial number had been scratched off, he did not specify where he looked for a serial number, or testify about what knowledge, if any, he had about where a serial number is located on this make and model of firearm. (R. 48-77) At the scene, Bolanos's body camera footage captures him saying, "This one's defaced" as he inspected the Benelli, but that footage does not show him identifying – through words or gestures – where on the gun he saw the defacement. (St. Ex. 6 at T03:51:24Z-T03:51:35Z) The inventorying officer, Guillermo Gama, said nothing about the shotgun's defacement. (R. 79) Neither did David Kato, the other tactical team officer who testified at trial. (R. 33-48) And Andrew's statements to police said nothing about him knowing that the firearm was defaced. (R. 60-61, 64-65, 76; St. Ex. 1 at T03:37:15Z-T03:37:25Z, T03:38:22Z-T03:38:24Z; St. Ex. 6 at T03:47:00Z-T03:48:38Z)

"Knowledge generally refers to an awareness of the existence of the facts which make an individual's conduct unlawful." *People v. Sevilla*, 132 Ill. 2d 113, 125 (1989) (citing 21 Am. Jur. 2d *Criminal Law* § 136 (1981)). Here, the prosecution presented no evidence that Andrew knew the Benelli shotgun was defaced. Because the prosecution failed to prove Andrew's knowledge of the defacement beyond

a reasonable doubt, his conviction for violating section 24-5(b) should be reversed outright.

C. Conclusion

Stanley's construction of section 24-5(b) of the Criminal Code "was wrong when it was decided and is even more obviously wrong today, in a world where the mere possession of a firearm, without more, cannot be constitutionally prohibited." *Lee*, 2019 IL App (1st) 162563, ¶ 77 (Ellis, J., specially concurring). This Court should overrule *Stanley* and its progeny. Construed properly, possession of a defaced firearm is not an absolute liability offense, but instead requires proof of an implied mental state of knowledge. And contrary to the *Stanley* line of cases, defacement is an element of the offense, and the prosecution must prove the defendant knew that the firearm he possessed was defaced. Here, because the prosecution failed to prove beyond a reasonable doubt that Andrew knew the Benelli shotgun was defaced, this Court should reverse outright his conviction for the offense.

II. Alternatively, this Court should reverse Andrew's conviction and remand for a new trial because the trial court, in finding Andrew guilty, misapprehended the law and erroneously believed the prosecution was not required to prove beyond a reasonable doubt that he knew the firearm was defaced.

Even if this Court does not reverse outright Andrew's conviction, it should nevertheless reverse and remand for a new trial because the trial court misapprehended the applicable law. Specifically, the trial court erroneously believed the prosecution was not required to prove beyond a reasonable doubt that Andrew knew the serial number on the Benelli shotgun had been defaced. As Andrew established in Issue I, defacement is an element of the charged offense that carries an implied *mens rea* of knowledge. The trial court's misapprehension of the elements of the offense and the prosecution's burden of proof violated Andrew's right to due process. Andrew should receive a new trial.

Due process requires proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 315-16 (1979); U.S. Const. amend. XIV; Ill. Const. 1970, art. 1, § 2. While the trial court is presumed to know the law and apply it properly during a bench trial, that presumption can be rebutted where the record affirmatively shows otherwise. *People v. Hernandez*, 2012 IL App (1st) 092841, ¶ 41.

That presumption is rebutted where it is clear the judge misunderstood some aspect of the burden of proof. *People v. Nelson*, 2020 IL App (1st) 151960, ¶¶ 89, 104 (trial court failed to apply element of offense); *Hernandez*, 2012 IL App (1st) 092841, ¶ 41 (trial court misinterpreted element of offense); *People v. Robinson*, 368 Ill. App. 3d 963, 977-78 (1st Dist. 2006) (trial court misinterpreted element of offense); *People v. Kluxdal*, 225 Ill. App. 3d 217, 224 (1st Dist. 1991) (trial court

applied wrong burden of proof to insanity defense). This is true even where the trial court does not rule contrary to established law. *See Hernandez*, 2012 IL App (1st) 092841, ¶ 41 (trial court's misapplication of law involved statutory construction issue that was a question of first impression). A trial court's misapprehension of an element at a bench trial is essentially the same as a jury instruction that omits or incorrectly defines an element; in either situation, the error results in the trier of fact being misinformed about the prosecution's burden of proof. *Nelson*, 2020 IL App (1st) 151960, ¶ 133.

Whether the legal standards applied by a factfinder are correct is a legal question subject to *de novo* review. *See*, *e.g.*, *People v. Parker*, 223 Ill. 2d 494, 501 (2006) (whether jury instructions accurately conveyed applicable law); *see also People v. Johnson*, 2017 IL 120319, ¶ 15 (legal questions are reviewed *de novo*); *Hernandez*, 2021 IL App (1st) 092841, ¶¶ 27-28 (applying *de novo* review to analyze defendant's claim that trial court misapprehended the elements of the identity theft statute during a bench trial).

A. The trial court misapprehended the law regarding the essential elements of the offense of possession of a defaced firearm.

The record here rebuts the presumption that the trial court understood and properly applied the law. When pronouncing guilt, the trial court said the prosecution was not required to prove that Andrew knew the Benelli shotgun was defaced:

> I do believe that the State's evidence proves conclusively and beyond a reasonable doubt that Mr. Ramirez possessed that weapon. The next question is whether he had to have possessed it knowing that it had a defaced firearm or excuse me, a defaced serial number. And pursuant to *People* [*v.*] *Lee*, 2018 [IL] App. [(1st)] 162563, the State does not have to prove that. They only have to prove that he knowingly

> possessed the firearm and that the firearm had a defaced or obliterated serial number. There will be a finding of guilty.

(R. 103) The trial court's finding misapprehended the elements of the offense. As Andrew demonstrated in Issue I, the prosecution's burden of proof included establishing beyond a reasonable doubt that he knew the firearm was defaced. Thus, the court convicted Andrew without holding the prosecution to its burden of proving every element of the offense beyond a reasonable doubt.

The fact that the trial court relied on the *Lee* majority's interpretation of section 24-5(b) – which reaffirmed *Stanley* and held that the prosecution did not have to prove the defendant's knowledge of the firearm's defacement – does not keep intact the presumption that it correctly understood and applied the law. *See Hernandez*, 2012 IL App (1st) 092841, ¶ 41 (presumption can be overcome even where trial court has not ruled contrary to established Illinois law).

B. This error was not harmless beyond a reasonable doubt.

The trial court's misapprehension of the prosecution's burden of proof during Andrew's bench trial is a constitutional error that denies him due process. Consequently, reversal and remand is required unless it is clear beyond a reasonable doubt that a rational factfinder would have found Andrew guilty absent the error. *See Nelson*, 2020 IL App (1st) 151960, ¶ 134; *see also People v. Mohr*, 228 Ill. 2d 53, 69 (2008) (applying harmless-error standard to instructional error). Reversal is required unless the evidence was so overwhelming or clear and convincing that the error could not have affected the verdict. *Mohr*, 228 Ill. 2d at 69. The prosecution bears the burden of proving that a constitutional error was harmless. *Sullivan v. Louisiana*, 508 U.S. 275, 278-79 (1993); *People v. Patterson*, 217 Ill. 2d 407, 428 (2005).

This error was not harmless beyond a reasonable doubt. As Andrew demonstrated in Issue I, the prosecution did not present overwhelming proof that he knew about the firearm's defacement. At trial, the prosecution introduced Andrew's statement establishing that he bought the Benelli shotgun, and the parties stipulated that the firearm's serial number was indeed defaced. (R. 88) But as Andrew noted earlier in Issue I, the prosecution did not introduce the Benelli shotgun into evidence. And while body camera footage admitted at trial shows recovering officer Adolfo Bolanos saying, "This one's defaced" as he had the shotgun turned upside down, the video does not conclusively show where exactly on the shotgun he saw the defacement. (St. Ex. 6 at T03:51:24Z-T:03:51:35Z) Bolanos's testimony is not much more illuminating: he simply said he could tell the serial number was scratched off. (R. 57-58) Bolanos did not specify where on the shotgun he looked for the serial number, or about what knowledge, if any, he had about where a serial number is typically located on that make and model of firearm. (R. 48-77) At most, these facts merely corroborate the stipulation between the parties that the shotgun was defaced. And to the extent that Bolanos knew from his training and experience as a police officer where the serial number was on this specific shotgun, it is unreasonable to impute that knowledge and expertise to a member of the general public like Andrew.

C. Andrew should receive a new trial even if this error was not preserved.

1. *Given the unique circumstances of this error, ordinary forfeiture rules should be relaxed.*

Andrew did not interrupt the trial court during its pronouncement of guilt or raise this issue in his posttrial motion. But forfeiture is a limitation on the parties,

not a reviewing court. *People v. Sophanavong*, 2020 IL 124337, ¶ 21. This Court should relax forfeiture and review the issue for two reasons.

First, trial counsel's failure to object in these unique circumstances would not have advanced the purpose of the forfeiture doctrine. The forfeiture rule exists to encourage defendants to raise issues in the trial court so that the trial judge has a chance to correct any errors before an appeal, and to prevent the defendant from obtaining a reversal through his own inaction. *People v. Herron*, 215 Ill. 2d 167, 175 (2005). But here, the trial court could not have cured the error even if defense counsel had objected. While *Stanley* and its progeny are wrongly decided, those appellate court decisions were binding precedent that the trial court was compelled to follow. *People v. Carpenter*, 228 Ill. 2d 250, 259-60 (2008). Indeed, the trial court applied that precedent, expressly citing *Lee*, one of the decisions reaffirming *Stanley*. (R. 103) The forum for correcting the errors created by the *Stanley* line of cases was a reviewing court, not the trial court. *See id*. Requiring defense counsel to object under such conditions would have been an empty formality. *Cf. People v. Denson*, 2014 IL 116231, ¶ 13 (where defendant filed response to prosecution's motion *in limine*, no need for defendant to file a separate pleading restyling that response as a defense motion *in limine* in order to preserve issue for appellate review).

Second, this Court has relaxed forfeiture where defense counsel's failure to object concerned an issue of law where both the parties and the trial judge proceeded under an erroneous view of the law. *See People v. Johnson*, 191 Ill. 2d 257, 274-75 (2000) (post-conviction petitioner did not forfeit issue concerning trial court's erroneous assignment of burden of proof on fitness where both parties before

the court and the trial judge all misapprehended the law on that issue). Similarly, the parties here proceeded under the mistaken belief that Andrew's knowledge of the shotgun's defacement was not an element the prosecution had to prove. (R. 30-32, 90-102) And the trial judge's pronouncement of guilt explicitly demonstrates that he too was operating under the same misapprehension. (R. 103)

2. *Even if forfeiture applies, a new trial is warranted under the plain-error doctrine.*

(a) *The evidence was closely balanced.*

As Issue I explains, Andrew's conviction should be reversed outright because the prosecution's evidence was insufficient to prove beyond a reasonable doubt that he knew the firearm was defaced. But even if this Court disagrees, the evidence on this point was closely balanced, thereby permitting review of the trial court's misapprehension of the law here as first-prong plain error. Ill. S. Ct. R. 615(a). With first-prong plain error, a defendant must show that the evidence is so closely balanced that the error alone threatened to tip the scales of justice against him. *People v. Piatowski*, 225 Ill. 2d 551, 565 (2007). A reviewing court evaluates the totality of the evidence, including the evidence on the elements of the charged offenses and the witnesses' credibility, assessing it in a qualitative, commonsense manner. *People v. Sebby*, 2017 IL 119445, ¶ 53. Reviewing courts err on the side of fairness in close cases so as not to convict an innocent person. *People v. Naylor*, 229 Ill. 2d 584, 605-06 (2008).

The evidence here was closely balanced because a central question for the factfinder to decide was whether Andrew knew the Benelli shotgun was defaced. And as Andrew has already discussed in this brief, the evidence was far from

overwhelming on this point. To be sure, Officer Bolanos testified that the shotgun's serial number had been scratched off, and at the time he recovered the firearm he remarked that it was defaced. (R. 57-58; St. Ex. 6 at T03:51:24Z-T03:51:35Z) Yet the prosecution did not establish where on the shotgun Bolanos saw the defacement, or his familiarity with where to look on that specific firearm for a serial number. (R. 48-77; St. Ex. 6 at T03:51:24Z-T03:51:35Z) And as mentioned earlier, it is unreasonable to impute a law enforcement officer's knowledge of firearm serial numbers to a layperson.

(b) *The trial court's misapprehension of the applicable law affected Andrew's substantial rights.*

The trial court's error is also reviewable as second-prong plain error because it affected Andrew's substantial rights. To demonstrate serious error under the substantial-rights prong, "the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005).

Second-prong plain error occurs where a court misapprehends or misapplies the law. *In re Danielle J.*, 2013 IL 110810, ¶ 32. Such was the case here. The trial court found Andrew guilty of possession of a defaced firearm under the mistaken belief that the prosecution was not required to prove knowledge of the defacement beyond a reasonable doubt. This violated Andrew's due process right to have the prosecution held to its burden of proving him guilty of every element of the offense. U.S. Const. amend. XIV; Ill. Const. 1970 art. 1, § 2; *Jackson*, 443 U.S. at 316; *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *In re Winship*, 397 U.S. 358, 364 (1970).

This Court's precedent on second-prong plain error review in instructional error cases is instructive. In jury trials, second-prong plain error applies where an instructional error creates a serious risk that jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial. *People v. Hartfield*, 2022 IL 126729, ¶ 50 (quoting *Herron* 215 Ill. 2d at 193 and *People v. Hopp*, 209 Ill. 2d 1, 8 (2004)). This Court has repeatedly held that "certain instructions, such as the burden of proof and elements of the offense, are essential to a fair trial and that the failure to give such instructions constitutes grave error when, viewing the record as a whole, it appears that the jury was not apprised of the People's burden of proof." *People v. Reddick*, 123 Ill. 2d 184, 198-99 (1988) (citing *People v. Berry*, 99 Ill. 2d 499 (1984); *People v. Roberts*, 75 Ill. 2d 1, 13 (1979); and *People v. Jenkins*, 69 Ill. 2d 61 (1977)). "The complete omission of an issue as central to the criminal trial as a part of the definition of the crime charged deprives the jury of the guidance it must have properly to decide the case." *People v. Ogunsola*, 87 Ill. 2d 216, 223 (1981) (citing *Jenkins*, 69 Ill. 2d at 66 and *People v. Parks*, 65 Ill. 2d 132, 138 (1976)).

In Andrew's case the factfinder here – the trial court – misapprehended the elements of the offense, relying on improper guidance from the appellate court on construing the possession of a defaced firearm statute. (R. 103) Consequently, Andrew was convicted without the factfinder determining whether the prosecution had proven that he knew the shotgun he possessed was defaced.

Moreover, the core of the substantial right at issue here is Andrew's fundamental right to liberty. This Court has pointed to the right to liberty as a basis for reviewing as second-prong plain error sentencing issues involving a trial

court's misapplication of the law. *See People v. Martin*, 119 Ill. 2d 453, 458 (1988) (citing *Ingraham v. Wright*, 430 U.S. 651, 673-74 (1977)).

The fundamental right to liberty is no less substantial when the trial judge's misapplication of the law happens while serving as the factfinder at trial and pronouncing guilt. As the Supreme Court emphasized in *In re Winship*, "[t]he accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction." *Winship*, 397 U.S. at 363. Thus, during a trial, a defendant's right to demand the prosecution prove its case beyond a reasonable doubt is a protection of "surpassing importance." *People v. Ehlert*, 211 Ill. 2d 192, 212 (2004) (quoting *Apprendi*, 530 U.S. at 476). The reasonable-doubt standard "has formed the bedrock of constitutional criminal procedure for centuries." *Id*.

When the prosecution is relieved of meeting this burden in full, accuseds are deprived of their liberty without due process of law. *See id*. Yet that is what the trial court's reliance on the rule of *Stanley* during the pronouncement of guilt did here. Such error strikes at the heart of the integrity of the judicial process. *Cf. Winship*, 397 U.S. at 364 ("It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned."). Consequently, this Court should apply the second prong of the plain-error doctrine, reverse Andrew's conviction, and remand for a new trial.

D. Conclusion

In sum, the trial court misapprehended the elements of the offense of possession of a defaced firearm. The court, acting as the factfinder, erroneously convicted Andrew of the offense based on the mistaken belief that the prosecution had no burden to prove that he knew the Benelli shotgun was defaced. This constitutional error was not harmless beyond a reasonable doubt. And even if this error was not preserved, Andrew should receive relief, via either relaxation of the forfeiture doctrine or the plain-error doctrine. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, Andrew Ramirez, Defendant-Appellant, respectfully requests that this Court reverse outright his conviction for possession of a defaced firearm under Issue I. Alternatively, Andrew asks this Court to reverse and remand for a new trial under Issue II.

Respectfully submitted,

DOUGLAS R. HOFF
Deputy Defender

MATTHEW M. DANIELS
Assistant Appellate Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR DEFENDANT-APPELLANT

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 or words contained in 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, is 46 pages.

/s/Matthew M. Daniels
MATTHEW M. DANIELS
Assistant Appellate Defender

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2021 IL App (1st) 191392-U

No. 1-19-1392

Order filed November 19, 2021

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 15 CR 311
	)	
ANDREW RAMIREZ,	)	Honorable
	)	Timothy Joseph Joyce,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SHARON ODEN JOHNSON delivered the judgment of the court.
Presiding Justice Daniel Pierce and Justice Sheldon Harris concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm where the evidence was sufficient to prove defendant's constructive possession of a defaced firearm and the State was not required to prove that defendant knew the serial number on the firearm was defaced.

¶ 2 Following a bench trial, defendant Andrew Ramirez was convicted of possession of a defaced firearm and sentenced to two years' probation. On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he knew the serial number on the firearm was defaced. Alternately, defendant contends that the trial court's comments in finding him guilty

misapprehended the law and erroneously concluded that the State was not required to prove beyond a reasonable doubt that he knew the serial number on the firearm was defaced. For the reasons that follow, we affirm.

¶ 3 The underlying facts are not in dispute. On May 10, 2018, at approximately 11 p.m., Chicago police executed a search warrant at 3234 South Komensky Avenue, a two-story residence. Defendant and his mother, Irene Morales-Ramirez, were present in the home when police entered the residence to execute the search warrant. Because no one answered the door, the police broke down the door. When the police entered, defendant's mother was at the bottom of the stairs and defendant was coming down the stairs. Defendant's mother was wearing nightclothes while defendant was wearing street clothes. Defendant was initially detained on the first floor landing but was subsequently allowed to go back to the second floor to retrieve shoes from the second bedroom. Thereafter police officers led defendant back downstairs while other police officers focused on the second bedroom as the "target" room and subsequently recovered a 20-gauge Benelli shotgun whose serial number was defaced, a smaller shotgun, a 9 millimeter handgun, ammunition, and suspect cannabis. The Benelli shotgun was recovered from under the mattress of a single bed near where defendant retrieved his shoes. Police also recovered mail from that bedroom bearing defendant's name and the residence address. Police observed a set of bunk beds and a single bed in the room, as well as children's toys, adult men's clothing in the closet, a beige or pink vest, a pair of reddish or pink boots, a red or pink belt, an orange or peach jersey and a black bag that could have been a purse. Members of the tactical team wore body cameras and videotaped the warrant execution and subsequent search of the residence.

¶ 4 There was testimony at trial that defendant told police that the shotguns were upstairs in the bedroom in plain view and that he knew the shotguns were obtained illegally. Defendant was arrested and taken to the police station where he was Mirandized before making a statement. He told police that he bought the shotgun from a coworker for $100 and lunch. The State did not present any direct evidence that defendant knew that the shotgun's serial number was defaced. The parties stipulated at trial that the Benelli shotgun's serial number had been changed, altered, removed, or obliterated.

¶ 5 Following closing arguments, the trial court found defendant guilty. The trial court stated:

> "I do believe that the State's evidence proves conclusively and beyond a reasonable doubt that Mr. Ramirez possessed that weapon. The next question is whether he had to have possessed it knowing that it had a defaced firearm or excuse me, a defaced serial number. And pursuant to People versus Lee, 2018 Ill. App. 1st 162563, the State does not have to prove that. They only have to prove that he knowingly possessed the firearm and that the firearm had a defaced or obliterated serial number. There will be a finding of guilty."

¶ 6 Defendant filed a motion for new trial on April 11, 2019, arguing in part that there was no evidence presented that he constructively or directly possessed the defaced firearm or resided at the residence. He also filed a motion to reconsider on the same date raising identical issues. Neither motion contained any argument regarding the issues he raises in this appeal, namely that proof of knowledge is required to sustain his conviction. On April 16, 2019, the trial court denied defendant's posttrial motions and subsequently sentenced him to two years' probation.

¶ 7 Defendant's notice of appeal was filed on June 13, 2019, and the Office of the State Appellate Defender was appointed to represent defendant on June 28, 2019. On January 27, 2021, our supreme court granted defendant's motion for a supervisory order and directed this court to treat defendant's notice of appeal as a properly perfected appeal from the trial court's judgment.

¶ 8 On appeal, defendant contends that the State failed to prove beyond a reasonable doubt that he knew the serial number on the firearm was defaced. Alternately, defendant contends that the trial court's comments in finding him guilty misapprehended the law and erroneously concluded that the State was not required to prove beyond a reasonable doubt that he knew the serial number on the firearm was defaced.

¶ 9 As a threshold matter, we note that defendant's posttrial motions did not challenge the sufficiency of the evidence, and neither party addressed this issue in their respective briefs. Moreover, defendant did not request review of his claims under plain error or any other method whereby we can consider a forfeited claim.

¶ 10 Generally, a claim is forfeited when not raised both contemporaneously and in a posttrial motion. *People v. Reese*, 2017 IL 120011, ¶ 60. However, our supreme court has recognized three exceptions to this requirement. *People v. McDonald*, 2016 IL 118882, ¶ 45. Reviewing courts will review (1) constitutional issues properly preserved at trial that may be raised later in a postconviction petition, (2) challenges to the sufficiency of the evidence, and (3) plain errors. *Id.* In *People v. Enoch*, 122 Ill. 2d 176, 190 (1988), our supreme court held that when a defendant only fails to comply with the statutory requirement to file a posttrial motion, we can review issues under one of the three exceptions in order to promote judicial economy and finality of judgments.

¶ 11 Here, as defendant challenges the sufficiency of the evidence in this appeal and failed to raise that issue in his posttrial motions, we will apply the sufficiency of the evidence exception to forfeiture. We now turn to the merits of his contention.

¶ 12 In this appeal, defendant challenges this court's precedential decisions that the State is not required to prove knowledge that the gun's serial number was defaced in order to convict a defendant of possession of a defaced firearm. See *People v. Stanley*, 397 Ill. App. 3d 598 (2009); *People v. Falco*, 2014 IL App (1st) 111797; *People v. Lee*, 2019 IL App (1st) 162563. Primarily relying on Justice Ellis' specially concurring opinion filed with this court's decision in *Lee*, 2019 IL App (1st) 162563, ¶¶ 77-98, defendant argues that this court's prior decisions are incorrect and instead contends that defacement is "undeniably an element of the offense that the State must prove beyond a reasonable doubt." In support of his conclusion, defendant maintains, without authority, that possession of a defaced firearm is not an absolute liability offense, thus a *mens rea* must be associated with the defacement element. Additionally, defendant contends, again without authority, that the offense must include defacement as an element in order for the statute to be constitutional under the second amendment of the United States Constitution. Because the State did not prove this element beyond a reasonable doubt, defendant asserts that his conviction must be reversed outright.

¶ 13 We initially note that the 2002 version of the applicable statute, 720 ILCS 5/24-5(b) (West 2018)), was previously held unconstitutional by this court in *People v. Quinones*, 362 Ill. App. 3d 385 (2005). Specifically, the 2002 version of section 24-5(b) provided 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."

720 ILCS 5/24-5(b) (West 2002). The court in *Quinones* found the statute unconstitutional because the statute as written created an unconstitutional mandatory rebuttable presumption of guilt. *Quinones*, 362 Ill. App. 3d at 394.

¶ 14 However, the legislature amended section 24-5(b) in P.A. 93-906, effective August 11, 2004, eliminating the language which conveyed *prima facie* evidentiary status to possession of a defaced firearm. 720 ILCS 5/24-5 (West 2018). The amended section 24-5(b) provides that: "[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." 720 ILCS 5/24-5(b) (West 2018).

¶ 15 When reviewing challenges to the sufficiency of the evidence, our inquiry is whether, after reviewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Norris*, 399 Ill. App. 3d 525, 531 (2010). A reviewing court will not reverse a conviction unless the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt of the defendant's guilt. *Id.*

¶ 16 To sustain defendant's conviction of possession of a firearm with a defaced serial number, the State was required to prove that defendant intentionally or knowingly possessed a firearm upon which the serial number has been changed, altered, removed, or obliterated. 720 ILCS 5/24-5(b) (West 2018); *People v. Stanley*, 397 Ill. App. 3d 598, 607 (2009). As stated above, the issue of whether the required knowledge extends to the defacement of the firearm as an element of the offense has been previously addressed by this court on at least three prior occasions.

¶ 17 In *Stanley*, this court concluded, as a matter of first impression, that the State need not prove knowledge of the character of the firearm to prove possession of a defaced firearm. *Stanley*,

397 Ill. App. 3d at 609. Thus, the State must prove defendant's knowing possession of the defaced firearm but need not prove knowledge of the character of the firearm. *Id.* at 609. In reaching that conclusion, the court analyzed the underlying statute, and noted that it "clearly lack[ed] any *mens rea*. *Id.* at 605. In doing so, the court concluded that section 24-5(b) was "unmistakably a possessory offense," and that the legislature did not intend to create an absolute liability offense for the possession of a defaced firearm. *Id.* at 607. Rather, the court concluded that the State could establish the elements of the offense by proof of either a knowing or intentional mental state on the part of the accused and did so when it alleged that defendant knowingly possessed the firearm. *Id.*; see 720 ILCS 5/4-3(b) (West 2006). Additionally, the court determined whether the knowing mental state applied to the possession of the defaced firearm or knowledge of the defacement. *Stanley*, 397 Ill. App. 3d at 607. We concluded that the *mens rea* applicable to the charge against defendant was knowledge and further that it applied only to the possessory component of the offense in conformance with the legislature's recognition of the potential danger posed by defaced weapons. *Id.* at 608. It found that the mere possession of such weapons was the evil sought to be remedied by the offense, to deter the possession of altered weapons. *Id.*

¶ 18 This court next reviewed its decision in *Falco*, where the defendant contested a conviction for possession of a firearm with a defaced serial number. *Falco*, 2014 IL App (1st) 111797, ¶ 14. Relying on *Stanley*, we found that although the offense of possession of a defaced firearm does not identify a mental state, the elements of the offense are knowledge and possession. *Id.* Proof of knowledge of the defacement was not required, while the State must prove the knowing possession of the firearm by defendant. *Id.*

¶ 19 Similarly, in *Lee* this court found that we "ha[ve] consistently held that under section 24-5(b) the State need only prove knowledge of possession of a gun that has defaced identification marks, and the legislature has not acted to change the law." *Lee*, 2019 IL App (1st) 162563, ¶ 43. We concluded that "[t]he State needed to prove beyond a reasonable doubt only that defendant knowingly possessed a firearm and that the firearm's identification number was defaced." *Id.*

¶ 20 The same conclusion is warranted here, and it is supported by the doctrine of *stare decisis*. That doctrine expresses the policy of courts to stand by precedents and not to disturb settled points. *People v. Caballes*, 221 Ill. 2d 282, 313 (2006). Any departure from *stare decisis* must be specially justified. *People v. Colon*, 225 Ill. 2d 125, 146 (2007). Thus, prior decisions should not be overruled absent good cause or compelling reasons. *Id.*

¶ 21 In challenging this court's prior decisions, defendant heavily relies on the specially concurring opinion filed with *Lee*. His reliance on the words and ideas expressed in that special concurrence is misplaced; those words and ideas are not the decision of this court. See *Carter v. DuPage County Sheriff*, 304 Ill. App. 3d 443, 449 (1999); *Southwestern Illinois Development Authority v. Al-Muhajirum*, 318 Ill. App. 3d 1005, 1008 (2001). Judicial opinions, like judgments, are authority only for what was actually decided in the case. See *In re N.G.*, 2018 IL 121939, ¶ 67. The majority in *Lee* held that knowledge that the gun was defaced was not a necessary element of the offense; in doing so, it adhered to this court's established precedent, and we too will adhere to established precent. Accordingly, we hold that the State was required to prove only that defendant knowingly possessed the defaced firearm and not that he knew the firearm was defaced.

¶ 22 Here, the State did not present evidence at defendant's trial that he actually possessed the defaced firearm but presented evidence to support its theory of constructive possession. To

establish constructive possession, the State must prove that the defendant (1) had knowledge of the presence of the firearm and (2) exercised immediate and exclusive control over the area where the firearm was found. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 17. Knowledge may be shown by evidence of a defendant's acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found. *People v. Hines*, 2021 IL App (1st) 191378, ¶ 32. Control is established when a person has the intent and capability to maintain control and dominion over an item, even if he lacks personal present dominion over it. *Id.* The defendant's control over the location where weapons are found gives rise to an inference that he possessed the weapons. *Id.* Habitation in the premises where contraband is discovered is sufficient evidence of control to constitute constructive possession. *Spencer*, 2012 IL App (1st) 102094, ¶ 17. Proof of residency in the form of rent receipts, utility bills and clothing in closets is relevant to show the defendant lived on the premises and therefore controlled them. *Id.*, (citing *People v. Cunningham*, 309 Ill. App. 3d 834, 828 (1999)). In deciding whether constructive possession is shown, the trier of fact is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might create a reasonable doubt as to the defendant's guilt. *Id.*

¶ 23 In the case at bar, defendant told police that there were weapons in the second-floor bedroom where he retrieved his shoes. Police then recovered weapons and other contraband from that bedroom. This evidence shows that defendant had knowledge that the weapons were located on the premises. Additionally, police recovered mail addressed to defendant from the room where the weapons were recovered. There was also some men's clothing in the closet. The only people present at the residence at the time the search warrant was executed were defendant and his mother, and again, defendant told police that the contraband, including the defaced firearm, was located in

the bedroom where he retrieved his shoes. We find that such evidence supports an inference that defendant had immediate and exclusive control over the bedroom where the firearm was found. Furthermore, defendant told police that he purchased the Benelli shotgun from a coworker for $100 and lunch. This evidence shows that defendant knowingly possessed the defaced firearm. Finally, defendant stipulated at trial that the recovered Benelli shotgun was defaced. Viewing the evidence presented at defendant's trial in the light most favorable to the State, as we must, we conclude that a reasonable trier of fact could find that defendant constructively possessed the defaced firearm that was recovered from under the mattress of the single bed.

¶ 24 As an alternate contention, defendant maintains that his conviction should be reversed and remanded for a new trial because the trial court misapprehended the law when it erroneously stated in its comments that the State was not required to prove beyond a reasonable doubt that defendant knew the serial number on the firearm was defaced. He acknowledges that this issue was not preserved for appellate review as it was not objected to at trial nor was it included in his posttrial motions, but states that this court can review it under both prongs of the plain error doctrine.

¶ 25 As previously noted, generally, a claim is forfeited when not raised both contemporaneously at trial and in a posttrial motion. *People v.* Enoch, 122 Ill. 2d 176, 186 (1988). The plain error doctrine allows a reviewing court to address defects affecting substantial rights if the evidence is closely balanced or if fundamental fairness so requires rather than finding the claims forfeited. *People v. Woods*, 214 Ill. 2d 455, 471 (2005). A defendant raising a plain error argument bears the burden of persuasion. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 26 To establish plain error, a defendant must first show that a clear or obvious error occurred (*id.*), and the evidence is so closely balanced that the error alone threatened to tip the scales of

justice against the defendant, regardless of the seriousness of the error (*People v. Naylor*, 229 Ill. 2d 584, 593 (2008)) or that the error was sufficiently grave that it deprived defendant of a fair trial (*People v. Herron*, 215 Ill. 2d 167, 187 (2005)).

¶ 27 The first step in a plain error review is to determine whether the challenged comments constituted error, and the burden is on defendant to establish that an error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); *People v. Guerrero*, 2020 IL App (1st) 172156, ¶ 15. We have previously determined herein that the State was only required to prove defendant's knowing possession of the defaced firearm. Thus, we find that the trial court's comments, regarding knowledge of the defacement not being required to find defendant guilty, were correct statements of the law and no error occurred. Where there is no error, there can be no plain error. *People v. Scott*, 2020 IL App (2d) 180378, ¶ 14. We therefore reject defendant's contention that an error occurred.

¶ 28 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 29 Affirmed.

In the Circuit Court of Cook County,
Illinois, Criminal Division

People of the State of Illinois,
Plaintiff,

v.

Andrew Ramirez,
Defendant.

No. 18 CR 7591

NOTICE OF APPEAL

An appeal is taken from the order or judgement described below.

1) Court to which appeal is taken: Illinois Appellate Court, 1st District

2) Name of appellant and address to which notices shall be sent.
Name: Andrew Ramirez c/o
Address: State Appellate Defender
100 W. Randolph
Chicago, IL 60602

3) Name and address of appellant's attorney on appeal.
Name: State Appellate Defender
Address: 100 W. Randolph
Chicago, IL 60602

If appellant is indigent and has no attorney does he want one appointed? Yes

4) Date of Judgement or order: April 16th, 2019

5) Offense of which convicted: Possession of a defaced firearm

6) Sentence: Two years probation

7) If appeal is not from a conviction, nature of order appealed from: N/A

Counsel for the Defence at trial

Jason R. Epstein
190 S. LaSalle #2100
Chicago IL 60603
(312) 869-2603

01

E-FILED
1/11/2021 1:26 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

IN THE

SUPREME COURT OF ILLINOIS

ANDREW RAMIREZ, Movant, -vs- Hon. Maureen E. Connors, Hon. Sheldon A. Harris, Hon. Sharon O. Johnson, and Hon. Mary L. Mikva, Justices of the Illinois Appellate Court, First District, Respondents.	)	Original Motion for Supervisory Order Pursuant to Supreme Court Rule 383. Trial Court No. 18 CR 7591 Appeal No. 1-19-1392

MOTION FOR SUPERVISORY ORDER

Movant, Andrew Ramirez, by Douglas R. Hoff, Deputy Defender, and Brian E. Koch, Assistant Deputy Defender, Office of the State Appellate Defender, respectfully moves that this Court enter a supervisory order directing the Appellate Court, First District, to treat the notice of appeal filed on June 13, 2019, and assigned appeal number 1-19-1932, as a properly perfected appeal.

In support of this motion, Brian E. Koch states:

1. Movant was convicted of possession of a firearm with a defaced serial number, and he was sentenced to 2 years of probation on April 16, 2019, by the Honorable Timothy Joseph Joyce. Appellant's motion to reconsider sentence was filed and denied on the same day. Appellant is currently not incarcerated.

2. Movant's trial counsel filed a notice of appeal from this April 16, 2019 judgment; the notice of appeal was file stamped by the Clerk of the Circuit Court of

Cook County on June 13, 2019, nearly a month after the 30-day filing deadline had passed. *See* Supporting Record at 1 (notice of appeal). In a notice of filing/proof of service attached to the notice of appeal, counsel stated that he filed the notice of appeal with the "clerk of Cook County" on May 16, 2019. *See* Supporting Record at 2 (notice of filing/proof of service). The envelope for the notice of appeal, however, indicates that it was mailed to the Clerk of the Appellate Court, First District. *See* Supporting Record at 3 (copy of envelope). In the notice of filing/proof of service, counsel "certif[ied]" that he served the notice of appeal on the Cook County State's Attorneys Office by mailing it on May 16, 2019, to the address for the State's Attorney's Office listed on the notice of filing. *See* Supporting Record at 2. The address for the Clerk of the Circuit Court of Cook County does not appear on the notice of filing/proof of service, nor does it certify that the notice of appeal was mailed to the Clerk of the Circuit Court. *Id.*

3. The circuit court found that the notice of appeal was "timely per notice of filing," transmitted the notice of appeal to the appellate court, and appointed the Office of the State Appellate Defender to represent movant. *See* Supporting Record at 4 (transmittal and circuit court order). The appellate court assigned the case appeal number 1-19-1392.

4. Movant's trial counsel was required to mail the notice of appeal to the circuit court no later than Thursday, May 16, 2019. Upon review of the record on appeal, however, appellate counsel determined that movant's counsel mistakenly mailed his notice of appeal to the wrong court, the appellate court. *See* Supporting Record at 3. Moreover, the notice of filing/proof of service attached to the notice of appeal did not properly certify that the notice of appeal was mailed to the circuit court by the due date of May 16, 2019. Illinois Supreme Court Rule 12(b)(5), which was

previously numbered Rule 12(b)(3), requires that when a document is filed by mail, it must be accompanied by "certification under section 1-109 of the Code of Civil Procedure of the person who deposited the document in the mail . . . stating the time and place of mailing or delivery, the complete address that appeared on the envelope or package, and the fact that proper postage or the delivery charge was prepaid." Ill. S. Ct. R. 12(b)(5) (eff. July 1, 2017). *See also* Ill. S. Ct. R. 373 (eff. July 1, 2017) (providing that time of mailing of a notice of appeal will be deemed time of filing, and "[p]roof of mailing shall be as provided in Rule 12"); Ill. S. Ct. R. 612(b)(18) (eff. July 1, 2017) (providing that Rule 373 applies to criminal appeals).

5. Movant's notice of filing/proof of service does not comply with Rule 12(b)(5), as it certifies only that the notice of appeal was mailed to the State's Attorney's Office on May 16, 2019. *See* Supporting Record at 2. Although the notice of filing/proof of service states that it was filed in the circuit court on that date, counsel did not certify that it was mailed to the circuit clerk on that date, nor does the notice list the address of the circuit clerk, both of which are required by Rule 12(b)(5). *See* Supporting Record at 2; Ill. S. Ct. R. 12(b)(5). *See also Secura Ins. Co. v. Illinois Farrmers Ins. Co.*, 223 Ill. 2d 209, 215-17 (2009) (holding that notice of appeal was not timely filed by mail under Rule 12(b)(3) and Rule 373 where notice of filing certified only that the notice of appeal was mailed to opposing counsel, but did not certify that the notice of appeal was timely mailed to the circuit clerk).

5. The circuit court treated the notice of appeal as timely because it erroneously believed that the notice of filing was sufficient to show timely filing, thus leaving movant with the mistaken impression that he had a valid appeal pending. Had the circuit court not treated his notice of appeal as timely, movant could have sought

leave to file a late notice of appeal, pursuant to Supreme Court Rule 606(c), in a timely manner. By the time appellate counsel received and reviewed the record, it was too late to file a motion for leave to file a late notice of appeal on movant's behalf.

6. Movant clearly intended to appeal his conviction and sentence, and he should not be denied his right to appeal under these circumstances. Fundamental fairness dictates that this Court enter a supervisory order directing the appellate court to treat the notice of appeal filed on June 13, 2019, and assigned appeal number 1-19-1392, as a properly perfected appeal. Appellate counsel has a complete record on appeal and will be able to file a brief if this Court allows this motion.

WHEREFORE, Movant respectfully requests that the Court grant this motion.

Respectfully submitted,

/s/ Brian E. Koch
BRIAN E. KOCH
Assistant Deputy Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR MOVANT

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

Under the penalties provided in law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this motion are true and accurate.

/s/ Brian E. Koch
BRIAN E. KOCH
Assistant Deputy Defender

IN THE

SUPREME COURT OF ILLINOIS

ANDREW RAMIREZ, Movant, -vs- Hon. Maureen E. Connors, Hon. Sheldon A. Harris, Hon. Sharon O. Johnson, and Hon. Mary L. Mikva, Justices of the Illinois Appellate Court, First District, Respondents.	)	Original Motion for Supervisory Order Pursuant to Supreme Court Rule 383. Trial Court No. 18 CR 7591 Appeal No. 1-19-1392

SUPPORTING RECORD

Index

In the Circuit Court of Cook County,
Illinois, Criminal Division

People of the State of Illinois,
Plaintiff,

v.

Andrew Ramirez,
Defendant.

No. 18 CR 7591

NOTICE OF APPEAL

An appeal is taken from the order or judgement described below.

1) Court to which appeal is taken: Illinois Appellate Court, 1st District

2) Name of appellant and address to which notices shall be sent.
Name: Andrew Ramirez c/o
Address: State Appellate Defender
100 W. Randolph
Chicago, IL 60602

3) Name and address of appellant's attorney on appeal.
Name: State Appellate Defender
Address: 100 W. Randolph
Chicago, IL 60602

If appellant is indigent and has no attorney does he want one appointed? Yes

4) Date of Judgement or order: April 16th, 2019

5) Offense of which convicted: Possession of a defaced firearm

6) Sentence: Two years probation

7) If appeal is not from a conviction, nature of order appealed from: N/A

Counsel for the Defence at trial

Jason R. Epstein
190 S. LaSalle #2100
Chicago IL 60603
(312) 869-2603

In the Circuit Court of Cook County,
Illinois, Criminal Division

People of the State of Illinois, Plaintiff, v. Andrew Ramirez, Defendant.	No. 18 CR 7591

To: Assigned ASA
Office of the States Attorney
2650 S. California Av.,
Chicago, IL 60608

NOTICE OF FILING

Please take notice that on May 16, 2019, I filed with the clerk of Cook County the attached NOTICE OF APPEAL.

Jason R. Epstein
Attorney for the Defence
Law Offices of Jason R. Epstein
190 S. LaSalle Ste. 2100
(312) 869-2603
Chicago, IL 60603
Atty No. 35878

PROOF OF SERVICE

I, Jason Epstein, an attorney, hereby certify that on May 16, 2019, I served this notice by placing in regular mail, postage prepaid, to the address stated above.

Law Offices of Jason R. Epstein
190 S. LaSalle Ste. 2100
Chicago, IL 60603

1000

60601

U.S. POSTAGE PAID
FCM LETTER
CHICAGO, IL
60647
AMOUNT
$0.15
R2304E104759-29

FOREVER
USA

Clerk of the Court
First District
Illinois Appellate Court
160 N LaSalle St, Fl 14,
Chicago, IL 60601

60601-311114

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126845

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff, Appellee	)	
-vs-	)	No. 18 CR 7591.
ANDREW RAMIREZ, Defendant, Appellant	)	

WHEREAS: On June 13, 2019, a notice of appeal having been filed (timely per notice of filing) in the above named case from a final judgment order entered against defendant on April 16, 2019,

IT IS HEREBY ORDERED:

The **Office of the State Appellate Defender** is appointed to represent defendant on appeal. Free record on appeal is allowed.

The Clerk of the Circuit Court is directed to prepare the record on appeal in conformity with Supreme Court Rule 608 and, pursuant to Supreme Court Rules 329 and 612(g), to accept any file-stamped documents not initially included in the record for preparation as a supplemental record.

The Clerk of the Circuit Court is directed to transmit the notice of appeal to the Clerk of the Appellate Court and to notify appointed counsel of its appointment.

ENTERED

LeRoy K. Martin, Jr.
JUDGE LEROY K. MARTIN, JR.

DATE: June 28, 2019

ENTERED
JUN 28 2019
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

Brian E. Koch, being first duly sworn on oath, deposes and says that the documents contained in the Supporting Record are true and accurate copies of the documents contained in the record on appeal or filed in the Appellate Court of Illinois.

BRIAN E. KOCH
Assistant Deputy Defender

SUBSCRIBED AND SWORN TO BEFORE ME
on January 11, 2021.

NOTARY PUBLIC

Official Seal
Roberta J Eisert
Notary Public State of Illinois
My Commission Expires 04/13/2022

IN THE

SUPREME COURT OF ILLINOIS

ANDREW RAMIREZ,	)	
	)	
Movant,	)	Original Motion for Supervisory Order Pursuant to Supreme Court Rule 383.
	)	
-vs-	)	
	)	
Hon. Maureen E. Connors, Hon. Sheldon A. Harris, Hon. Sharon O. Johnson, and Hon. Mary L. Mikva, Justices of the Illinois Appellate Court, First District,	)	Trial Court No. 18 CR 7591 Appeal No. 1-19-1392
	)	
Respondents.	)	

ORDER

This matter coming to be heard on Movant's motion, all parties having been duly notified, and the Court being advised in the premises,

IT IS HEREBY ORDERED:

That the Motion for Supervisory Order is hereby allowed/denied. The Appellate Court, First District, is directed to treat the notice of appeal filed on June 13, 2019, and assigned appeal number 1-19-1932, as a properly perfected appeal.

DATE: _____

_____
JUSTICE

BRIAN E. KOCH
Assistant Deputy Defender
Office of the State Appellate Defender
First Judicial District
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
1stdistrict.eserve@osad.state.il.us

COUNSEL FOR MOVANT

A-26

IN THE

SUPREME COURT OF ILLINOIS

ANDREW RAMIREZ, Movant, -vs- Hon. Maureen E. Connors, Hon. Sheldon A. Harris, Hon. Sharon O. Johnson, and Hon. Mary L. Mikva, Justices of the Illinois Appellate Court, First District, Respondents.	)	Original Motion for Supervisory Order Pursuant to Supreme Court Rule 383. Trial Court No. 18 CR 7591 Appeal No. 1-19-1392

NOTICE AND PROOF OF SERVICE

Hon. Maureen E. Connors, 160 North LaSalle St., 14th Floor, Chicago, IL 60601;

Hon. Sheldon A. Harris, 160 North LaSalle St., 14th Floor, Chicago, IL 60601;

Hon. Sharon O. Johnson,, 160 North LaSalle St., 14th Floor, Chicago, IL 60601;

Hon. Mary L. Mikva, 160 North LaSalle St., 14th Floor, Chicago, IL 60601;

Thomas Palella, Clerk of the Appellate Court, First Judicial District, 160 North LaSalle St. 14th Floor Chicago, IL 60601, tpalella@illinoiscourts.gov;

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@atg.state.il.us;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602; eserve.criminalappeals@cookcountyil.gov;

Mr. Andrew Ramirez, 5926 W. Pershing Rd., Cicero, IL 60804.

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 January 11, 2021, the Motion for Supervisory Order was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. On that same date, we electronically served the Clerk of the Appellate Court, First District to deliver one copy to each of the above-named Justices of the Appellate Court, First District, and electronically served the Attorney General of Illinois and opposing counsel, by transmitting a copy from an agency email address to the email addresses of the

persons named above. One copy is being mailed to the Movant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid.

/s/Ashley N. Downing
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us
COUNSEL FOR MOVANT

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CAROLYN TAFT GROSBOLL
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 27, 2021

Brian Edward Koch
Office of the State Appellate Defender
203 N. LaSalle, 24th Floor
Chicago, IL 60601

In re: Ramirez v. Connors
126845

Dear Brian Edward Koch:

Enclosed is a certified order entered January 27, 2021, by the Supreme Court of Illinois in the above-captioned cause.

Very truly yours,

Carolyn Taft Grosboll

Clerk of the Supreme Court

cc: Appellate Court, First District
Attorney General of Illinois - Criminal Division
Cook County Circuit Court
Hon. Mary Lane Mikva
Hon. Maureen E. Connors
Hon. Sharon O. Johnson
Hon. Sheldon A. Harris
State's Attorney Cook County

State of Illinois
Supreme Court

I, Carolyn Taft Grosboll, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files and Seal thereof do hereby certify the following to be a true copy of an order entered January 27, 2021, in a certain cause entitled:

126845	)	
	)	
Andrew Ramirez,	)	
	)	
Movant	)	
	)	
v.	)	
	)	Motion for Supervisory Order
Hon. Maureen E. Connors, Hon.	)	Appellate Court
Sheldon A. Harris, Hon. Sharon O.	)	First District
Johnson, and Hon. Mary L. Mikva,	)	1-19-1392
Justices of the Appellate Court, First	)	18CR7591
District,	)	
	)	
Respondents	)	

People State of Illinois

Filed in this office on the 11th day of January A.D. 2021.

IN TESTIMONY WHEREOF, I have set my hand and affixed the seal of said Supreme Court, in Springfield, in said State, this 27th day of January, 2021.

Carolyn Taft Grosboll *Clerk,*
Supreme Court of the State of Illinois

A-30

126845

IN THE

SUPREME COURT OF ILLINOIS

Andrew Ramirez,	)	
	)	
Movant	)	
	)	Motion for Supervisory Order
v.	)	Appellate Court
	)	First District
Hon. Maureen E. Connors, Hon. Sheldon A. Harris, Hon. Sharon O. Johnson, and Hon. Mary L. Mikva, Justices of the Appellate Court, First District,	)	1-19-1392
	)	18CR7591
	)	
Respondents	)	
	)	
People State of Illinois	)	

ORDER

This cause coming to be heard on the motion of movant, Andrew Ramirez, due notice having been given, and the Court being fully advised in the premises;

IT IS ORDERED that the motion for supervisory order is allowed. The Appellate Court, First District, is directed to treat the notice of appeal filed June 13, 2019, in case No. 1-19-1392, as a properly perfected appeal from April 16, 2019, judgment of the Circuit Court of Cook County in case No. 18 CR 7591.

Order entered by the Court.

FILED
January 27, 2021
SUPREME COURT
CLERK

No. 128123

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- ANDREW RAMIREZ, Defendant-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 1-19-1392. There on appeal from the Circuit Court of Cook County, Illinois, No. 18 CR 7591. Honorable Timothy Joseph Joyce, Judge Presiding.

NOTICE AND PROOF OF SERVICE

Mr. Kwame Raoul, Attorney General, 100 W. Randolph St., 12th Floor, Chicago, IL 60601, eserve.criminalappeals@ilag.gov;

Ms. Kimberly M. Foxx, State's Attorney, Cook County State's Attorney Office, 300 Daley Center, Chicago, IL 60602, eserve.criminalappeals@cookcountyil.gov;

Mr. Andrew Ramirez, 5926 W. Pershing Rd., Cicero, IL 60804

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 June 7, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the defendant-appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

/s/Alicia Corona
LEGAL SECRETARY
Office of the State Appellate Defender
203 N. LaSalle St., 24th Floor
Chicago, IL 60601
(312) 814-5472
Service via email is accepted at
1stdistrict.eserve@osad.state.il.us