No. 127815

IN THE
SUPREME COURT OF ILLINOIS

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| PEOPLE OF THE STATE OF ILLINOIS,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>DEMETRIUS GRAY,<br><br>Defendant-Appellee. | ) Appeal from the Appellate Court of Illinois, First District, No. 1-19-1086<br>)<br>) There on Appeal from the Circuit Court of Cook County, Criminal Division, No. 16-CR-10202<br>)<br>) The Honorable Mary Margaret Brosnahan, Judge Presiding. |

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

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**ORAL ARGUMENT REQUESTED**

## TABLE OF CONTENTS

## ARGUMENT

A defendant commits the offense of armed habitual criminal (AHC) if he possesses a gun and has two prior qualifying convictions. 720 ILCS 5/24-1.7. Here, the parties agree that: (1) defendant possessed a gun; (2) he had two prior qualifying convictions that he committed during his 20s; (3) he had another felony conviction for distributing cocaine in 2002 when he was 17; and (4) the parties stipulated at trial that he "has two prior qualifying felony convictions for the purposes of sustaining the charge of [AHC]." Def. Br. 6; R512.[1] Despite these undisputed facts, the appellate court held that the evidence was insufficient to convict defendant because prosecutors did not prove he either (1) was 18 at the time of his 2002 conviction in adult court or (2) would have been transferred to adult court if the 2014 amendments to the Juvenile Court Act (JCA) had been in place at that time. That decision is incorrect for multiple reasons.

### I. Defendant's Sufficiency Claim Fails for Several Independent Reasons.

#### A. Defendant's concession that age and jurisdiction "are not elements" of AHC defeats his sufficiency claim.

Defendant's sufficiency claim fails as a matter of law because he agrees that age and jurisdiction are not elements of AHC. Def. Br. 20-22. A reviewing court ruling on a sufficiency claim must determine whether a trier of fact "could have found the essential elements of the crime beyond a

[1] The parties' briefs are cited as "Peo. Br." and "Def. Br."

reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). The decision below incorrectly "identified" two elements of AHC that are not elements of the offense: (1) "defendant was at least 18" at the time of his prior conviction (because the JCA's 2014 amendments provide that anyone 18 or older is ineligible for juvenile court); or (2) defendant hypothetically would have "merited transfer to the criminal courts" had the amended JCA been in place then. *People v. Gray*, 2021 IL App (1st) 191086, ¶ 15. The People explained in their opening brief that under the plain language of the AHC Act, age and jurisdiction are not elements of AHC. Peo. Br. 16-25. Notably, other courts have expressly rejected the decision below on this basis. *E.g.*, *People v. Wallace*, 2023 IL App (1st) 200917, ¶ 37 ("We disagree with *Gray*" that age and jurisdiction are elements); *People v. Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-39 (rejecting *Gray*); *People v. Davis*, 2023 IL App (4th) 220477-U, ¶ 12 (similar).[2]

Indeed, defendant himself repeatedly states that age and jurisdiction "are not elements that the State must prove beyond a reasonable doubt." Def. Br. 20-22. Because, as the parties agree, age and jurisdiction are not elements of AHC, then — by definition — the appellate court erred when it held that the evidence was insufficient to sustain defendant's conviction because the People did not prove them at trial.

[2] Copies of unpublished cases cited in this brief are included in the parties' appendices or on this Court's website, https://www.illinoiscourts.gov/top-level-opinions/.

### B. Defendant's stipulation also defeats his sufficiency claim.

Defendant's sufficiency claim, which rests on the argument that the People failed to prove he had two qualifying prior convictions, also fails because the parties stipulated at trial that defendant "has two prior qualifying felony convictions for the purposes of sustaining the charge of [AHC]." R512. The People's opening brief demonstrated that the stipulation renders a sufficiency claim meritless because "a stipulation is conclusive as to all matters necessarily included in it and no proof of stipulated facts is necessary, since the stipulation is substituted for proof and dispenses with the need for evidence." *People v. Woods*, 214 Ill. 2d 455, 469 (2005); Peo. Br. 10-14.

Moreover, the People's brief demonstrated that the appellate court's decision puts the People in an impossible position and conflicts with this Court's established precedent. It is settled that if a defendant wishes to stipulate to "his status as a convicted felon," the prosecution must accept that stipulation, and may not introduce evidence regarding his criminal history. *People v. Walker*, 211 Ill. 2d 317, 341 (2004). Therefore, the decision below puts the People in an unjust bind: (1) at defendant's request, the parties stipulated that he has two prior qualifying convictions; and (2) then the appellate court overturned defendant's AHC conviction because the People did not present evidence at trial about his prior convictions that the appellate court thought necessary to *prove* they were qualifying offenses, but which would have been excluded at trial because of the stipulation. To avoid

precisely this result, it is settled that defendants may not raise sufficiency claims on appeal that challenge stipulations. *People v. Polk*, 19 Ill. 2d 310, 315 (1960) (defendants "cannot complain of the evidence which he has stipulated"); *People v. Busch*, 214 Ill. 2d 318, 330-34 (2005) (citing *Polk* and noting that to allow defendants to challenge stipulations on appeal would unfairly deny prosecutors opportunities to introduce additional evidence at trial to cure alleged defects in the evidence).

As the People's opening brief noted, if a defendant believes a stipulation was incorrect, his remedy lies in an ineffective assistance of counsel claim. Peo. Br. 12-14.[3] The distinction between sufficiency and ineffective assistance claims has important practical consequences. Where, as here, the appellate court finds that the evidence was insufficient to sustain a conviction, the People cannot retry the defendant. *Id.* But a defendant "who succeeds on a claim of ineffective assistance under *Strickland* is entitled to a new trial." *People v. Addison*, 2023 IL 127119, ¶ 37; *see also People v. Miramontes*, 2018 IL App (1st) 160410, ¶ 22 (remedy where counsel erred by entering stipulation is remand for new trial). At a new trial, the People could present additional evidence, including that defendant was convicted of two qualifying felonies in his 20s.

[3] Defendant also argues that he should not have to file a postconviction petition, but no one has suggested he should; rather, the correct course is to raise an ineffective assistance claim on direct appeal (as defendant has here). Def. Br. 39.

Defendant's primary response is telling: he raises just such an ineffective assistance claim and says this Court may resolve his appeal based on that claim, Def. Br. 31-32 — a path the People ask this Court to follow.

Defendant also argues that the People forfeited any argument based on the stipulation because the Cook County State's Attorney did not raise this issue in their appellate briefs or petition for leave to appeal. *See id.* at 34-35. However, the People were appellee in the appellate court and appellant here, so they may raise any argument supported by the record. *E.g.*, *People v. Artis*, 232 Ill. 2d 156, 164 (2009). Defendant cites no case declining to consider an argument in these circumstances.

Defendant's reliance on *People v. Campbell*, 208 Ill. 2d 203 (2003) (cited at Def. Br. 41), is similarly misplaced. In *Campbell*, the defendant alleged that counsel violated his right to confront his accusers by stipulating to the testimony of the prosecution's key witness. *Id.* at 209. And the remedy for a Confrontation Clause claim, like an ineffective assistance claim, is a new trial. *People v. Barner*, 2015 IL 116949, ¶¶ 70-71. Given that, after a successful ineffective assistance or Confrontation Clause claim, the People can present evidence in a new trial that proves the fact to which they previously stipulated, it is reasonable to allow defendants to challenge a stipulation when raising such claims, but not when raising a sufficiency of the evidence claim, which precludes retrial if successful.

Moreover, *Campell* requires defendant to prove (1) that there was no benefit to the stipulation, and (2) he objected to it. 208 Ill. 2d at 217. Here, the stipulation benefitted defendant because it kept the jury from learning about his lengthy history of felony convictions. Peo. Br. 13. Nor did defendant object to the stipulation, *see* Def. Br. 41, even though it was discussed in his presence multiple times, R179-80, 512. Rather, the portion of the record defendant cites was at a status hearing held *before* a stipulation was ever discussed, and defendant merely asked whether one of his prior convictions could serve as a predicate offense. And, as defendant notes, he also asked to plead guilty, Def. Br. 41, indicating his belief that prosecutors could prove *all* the elements of AHC, a position that is consistent with someone who has no objection to stipulating to one element.

### C. Defendant's sufficiency claim fails because he cannot rely on new evidence.

The People also demonstrated that defendant's sufficiency claim fails for a third reason: it relies on evidence that was not introduced at trial. Peo. Br. 9-14. Sufficiency claims "must be limited to evidence actually admitted at trial." *People v. Cline*, 2022 IL 126383, ¶ 32. But defendant's arguments and the decision below rely on evidence not presented at trial: a PSI report (created after trial) showing defendant's age when he was convicted in 2002. Peo. Br. 10-11. That the PSI report was introduced at sentencing and is part of the appellate record is irrelevant: what matters is that it was not admitted

at trial. *Cline*, 2022 IL 126383, ¶ 32. Accordingly, his sufficiency claim fails because sufficiency claims cannot be based on new evidence.[4]

Defendant's argument that he is not relying on new evidence because "the indictment [was] read to the jury" during jury selection, Def. Br. 37, fails for three reasons: (1) the indictment did not mention defendant's age; (2) indictments are not evidence (nor anything read during jury selection); and (3) the judge told the venire that the indictment "has no significance whatsoever" and is "not part of the evidence," *see* R245-46, 260; *People v. Haiges*, 379 Ill. 532, 534 (1942) (indictments are not evidence).

Defendant's observation that it is undisputed he was 17 in 2002, Def. Br. 39, is also irrelevant. To be sure, "judicial notice" applies to undisputed facts, Ill. R. Evid. 201(b), but it is settled that "judicial notice cannot be used to introduce new evidentiary material" to support a sufficiency claim, *Cline*, 2022 IL 126383, ¶ 32. In other words, that a fact is undisputed does not mean it can be introduced for the first time on appeal. The reason for that is sound: allowing defendants to introduce new facts in support of sufficiency claims robs the People of an opportunity to address those facts by introducing other evidence at trial or otherwise changing their strategy. Here, had defendant argued before trial that his 2002 conviction is not a qualifying conviction, prosecutors could have introduced evidence of his two felony

[4] If defendant wants to rely on facts not presented at trial, his remedy lies in an ineffective assistance claim. *E.g.*, *People v. Sanchez*, 404 Ill. App. 3d 15, 17 (1st Dist. 2010) (taking judicial notice of date of prior convictions to resolve claim that counsel erred by not objecting to other crimes evidence).

convictions that occurred in his 20s or might not have dismissed the 11 other charges he faced.

Defendant also misreads *Cline* in other ways. According to defendant, *Cline* holds that defendants cannot introduce new evidence on appeal to challenge witness credibility, but they *can* introduce new evidence if it "go[es] directly to an element of the offense." Def. Br. 36-37. Defendant's argument is illogical and does not reflect the law. Under his view, a defendant could raise a sufficiency claim on appeal and rely on a letter from someone who did not testify at trial, but who purports to provide the defendant an alibi, because that letter "goes directly to an element of the offense," namely identity. *Id.* Plainly, this result would be unfair, and while defendant tries to avoid *Cline*'s rule by quoting a line from *Cline* stating that the appellate court erred by allowing the defendant to rely on new evidence to attack "the credibility of an expert witness," in fact, *Cline* more broadly held that defendants cannot "introduce new evidentiary material not considered by the fact finder during its deliberations." 2022 IL 126383, ¶ 32.

Tellingly, defendant fails to cite any case allowing defendants to present new evidence to support a sufficiency claim. Defendant is incorrect that "[a] similar situation occurred" in *People v. Schultz*, 2019 IL App (1st) 163182 (cited at Def. Br. 38). *Schultz* — which addressed a sentencing claim, not a sufficiency claim — at most shows that courts may resolve sentencing claims by considering evidence introduced at sentencing. *Id.*, ¶ 13.

Defendant's argument that the People are "shift[ing] the burden of proof" is also wrong. Def. Br. 40. The People acknowledge their burden and maintain that they met it through the parties' stipulation. *Supra* pp. 3-4.

Finally, the People's brief noted that, even if defendant could rely on the PSI report, it proves that his sufficiency claim is meritless because it shows he was convicted of two qualifying felonies (unlawful use of a weapon and delivering cannabis in a school zone) in his mid-20s. Peo. Br. 15-16. Defendant's response — that the indictment did not list his felony cannabis conviction, which he says is a fatal defect under *People v. Collins*, 214 Ill. 2d 206 (2005), *see* Def. Br. 45 — misses the mark. *Collins* provides that "to vitiate a trial, a variance between allegations in a complaint and proof at trial must be material and of such character as may mislead the accused in making his defense." 214 Ill. 2d at 219. The Court held that incorrectly identifying the defendant's victims "was surplusage and did not affect the validity of the complaints." *Id.* The same is true of naming an "incorrect" predicate conviction under the AHC Act. *E.g.*, *People v. Rhodes*, 2021 IL App (1st) 190681-U, ¶¶ 20-23. Moreover, defendant does not argue that any variance in the indictment affected his defense. *See Collins*, 214 Ill. 2d at 219 (variance in an indictment is irrelevant if it does not "mislead the accused in making his defense").

## II. Defendant's and the Appellate Court's Interpretations Are Contrary to the Plain Language of the AHC Act.

The decision below should be reversed for the additional reason that it misinterprets the plain language of the AHC Act and the intent behind that legislation. Courts have recognized that "[t]he people of Illinois, through their elected representatives, have come to the conclusion that more severe firearm possession laws are an effective means to stem gun violence when applied to individuals with past felony convictions." *People v. Ashford*, 2022 IL App (1st) 191923-U, ¶ 37 (discussing AHC). And it is undisputed that the General Assembly intended the AHC Act "to protect the public from the threat of violence that arises when repeat offenders possess firearms." *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 27. Indeed, there is a long history of prohibiting felons from possessing guns. *People v. Brooks*, 2023 IL App (1st) 200435, ¶¶ 96-100 (collecting cases). Defendant's view and the ruling below contradict the plain language of the AHC Act and the legislature's intent.

### A. Under the Plain Language of the Act, Defendant's 2002 Felony Conviction Is a Qualifying Conviction.

A person is guilty of AHC if they possess a gun "after having been convicted" twice for offenses listed in subparagraphs 1-3. 720 ILCS 5/24-1.7(a). It is undisputed that the first requirement of a qualifying conviction under the AHC Act focuses on the past and asks whether the defendant was previously "convicted," and that defendant's 2002 offense meets that requirement because he pleaded guilty in adult court to a felony. Peo. Br. 16-17. The dispute here centers on the second requirement of a qualifying

conviction, *i.e.*, whether defendant's 2002 Class 1 felony conviction for manufacturing and delivering cocaine is among the offenses listed in subparagraphs 1-3 of the Act, specifically subparagraph 3, which states that qualifying convictions include "any violation" of the Controlled Substances Act or the Cannabis Control Act "that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7(a)(3).

The decision below interpreted "punishable" to mean the legislature intended to impose a multifaceted age and jurisdictional element, where prosecutors "need to prove" that the defendant (1) was at least 18 at the time of his prior conviction in adult court; or (2) hypothetically would have been transferred to adult court under the transfer provisions of the JCA, as the JCA was amended years after the predicate conviction. *Gray*, 2021 IL App (1st) 191086, ¶ 15. As noted, other appellate opinions have expressly rejected the decision below and interpret the AHC Act the same as the People here. *Supra* p. 2.

Not only does defendant concede that age and jurisdiction are not elements of AHC, Def. Br. 20-22, and not only have other appellate decisions expressly rejected the decision below in favor of the People's interpretation of the AHC Act, but they have done so for good reason: "punishable" has a straightforward, settled meaning that focuses on an offense's statutory classification, not the offender's personal characteristics, such as age or whether the criminal court would have had jurisdiction had the terms of the

JCA then been as they are today. *See* Peo. Br. 20-23; *see also Wallace*, 2023 IL App (1st) 200917, ¶¶ 31-43; *Irrelevant*, 2021 IL App (4th) 200626, ¶¶ 35-39; *see also People v. Munday*, 293 Ill. 191, 204-05 (1920) ("punishable" by imprisonment does "not mean [a crime] which must be" so punished, but "one which might be"); *United States v. Coleman*, 656 F.3d 1089, 1092 (10th Cir. 2011) (reference to prior convictions "punishable" by at least a year in prison "focuses on the maximum punishment for *any* defendant charged with that crime, not the characteristics of a particular offender"); *Brooks*, 2023 IL App (1st) 200435, ¶ 102 (affirming AHC conviction: "History demonstrates that there is no requirement for an individualized determination of dangerousness as to each person in a class of prohibited persons."). Indeed, defendant admits that a prior qualifying conviction "is defined by its statutory classification." Def. Br. 15. And, plainly, a 17-year-old who commits a felony "might be" punished in adult court under the JCA transfer provisions, even today. *Munday*, 293 Ill. at 204-05.

Further, as the People explained, the statutes listed in subparagraph 3 (the Controlled Substances and Cannabis Control Acts) define many felony, misdemeanor, and petty offenses. 720 ILCS 570/100 & 550/1 *et seq*. Therefore, the legislative intent of the phrase "any violation" of those statutes "that is punishable as a Class 3 felony or higher" is to ensure that *only* Class 3 or higher felonies are qualifying offenses, and that lesser felony, misdemeanor and petty offenses are not. Peo. Br. 20. Otherwise, someone

with a limited criminal history of misdemeanor marijuana possession, for example, could be convicted of AHC (which carries a Class X sentence).

Accordingly, defendant's 2002 conviction is a qualifying conviction because (1) he was "convicted" in adult court of manufacturing and delivering cocaine, which (2) under the Controlled Substances Act is "punishable" as a Class 1 felony. *See* 720 ILCS 570/401(c). That defendant was 17 is irrelevant because, as defendant concedes, "age is not an element." Def. Br. 20-22.

**B. Defendant's new interpretation is vague and baseless.**

Defendant's proposed new interpretation of the AHC Act has no legal basis and provides no clear direction to lower courts. Defendant proposes that, although age at the time of an offender's prior conviction is not an element to be proven, it "is a fact that must be considered." Def. Br. 22. Defendant does not explain what "a fact that must be considered" means. *Id.* He appears to contend that the Act "requires a court to determine," before trial, whether a prior conviction "'is punishable' under the current law by considering whether he would have been adjudicated or convicted." *Id.* at 23. Tellingly, defendant fails to support that contention with any authority. *Id.* Simply put, there is no basis for defendant's proposed interpretation of the Act where, before trial, a court "considers" a defendant's age, then the jury decides only whether he possessed a gun. Rather, because, as the parties (and other courts) agree, age is not an element under the AHC Act, there is no requirement for a court to "consider" age, just as there is no requirement to "consider" a defendant's height or the color of his gun.

Defendant similarly posits that whether the criminal courts had jurisdiction is part of a court's "consideration" "insofar as it determines where a case *originates*." *Id.* at 21 (emphasis in original). Again, defendant fails to tie the relevance of this "consideration" to any statute or precedent, and he admits that jurisdiction is not an element of AHC. *Id.* Moreover, defendant's argument ignores the transfer provisions of the JCA. For example, under defendant's view, if a 17-year-old is charged with a felony, and his case is transferred to adult court, his conviction is not a qualifying prior offense because it "*originates*" in juvenile court. No court has adopted such an extreme view, not even the appellate court below, which held that prior convictions are qualifying convictions if "the defendant merited transfer" to adult court under the JCA. *Gray*, 2021 IL App (1st) 191086, ¶ 15.

**C. Defendant's remaining arguments fail.**

Defendant contends that the use of the present tense in subparagraphs 1-3 of the AHC Act demonstrates that its focus is on the current "statutory classification" of an offense, Def. Br. 14-15, but it does not follow that an offense's statutory classification depends on age or court of origin.

Defendant's discussion of "juvenile brains" also provides him no support. *Id.* at 10-12. The parties agree that the AHC Act is unambiguous, so it must be interpreted based on its plain language, not extrinsic evidence. *Id.* at 14. Even setting that aside, defendant admits that his prior felony conviction may not be recharacterized as a juvenile delinquency adjudication and that he is "subject to all of the collateral consequences that come with

such a conviction." *Id.* at 22-23. The AHC Act provides one of those "collateral consequences": due to his felony convictions, he may not possess guns.

Moreover, defendant did not have a "juvenile brain" when he illegally possessed a firearm as a 38-year-old man, or when he committed multiple felonies in his 20s. Defendant is being punished because well into adulthood he chose to possess a gun illegally. Indeed, defendant himself emphasizes that courts "have repeatedly held that the legislature's intent in creating [AHC] was to punish an offender, not for his *past* crimes, but for his *current* offense, and according to his *current* level of dangerousness." *Id.* at 16 (emphasis in original). Furthermore, defendant's own cases show that juveniles can receive life sentences for their offenses. *Id.* at 11. It is untenable that lengthy juvenile sentences are accepted by the legislature, but prior convictions in adult court at 17 were not intended to serve as predicate offenses for crimes committed at 38.

Defendant's argument that the legislature "voiced similar rationales" about "juvenile brains" when amending the JCA, Def. Br. 11-12, fails for similar reasons. Moreover, the JCA amendments are not retroactive, proof that the legislature never intended to recharacterize prior felony convictions as juvenile adjudications. 705 ILCS 405/5-120. Defendant's observation that juvenile court adjudications are not "convictions" is irrelevant, Def. Br. 17-18, as defendant was convicted in adult court. And he is incorrect that, under

the People's interpretation, a 13-year-old would have a qualifying prior offense "even if in reality all proceedings occurred in juvenile court." *Id.* at 18. Again, the AHC Act requires a prior "conviction," which means a guilty verdict or plea in adult court. Peo. Br. 16-17.

Contrary to defendant's assertions, he *is* asking to retroactively recharacterize his felony conviction as a delinquency adjudication. Def. Br. 19. Defendant asserts that under "current law" he would be adjudicated in juvenile court if he committed his 2002 offense today. *Id.* at 9-10. But defendant is 38 now, so he would not be in juvenile court. Thus, while defendant says only the "present" matters, *id.*, he is really asking this Court to mix the past and present: he wants to apply "current law" retroactively to his 2002 offense and recharacterize his felony conviction as a delinquency adjudication.

Nor is it "simple," *see id.* at 28, to determine whether offenders hypothetically would have been transferred to adult court decades ago because evidence regarding the relevant transfer factors — such as willingness to use rehabilitation services in the juvenile system and differences in available services — was not collected at that time. Tellingly, none of defendant's cases involve ruling on whether offenders hypothetically would have been transferred to adult court if the amended JCA had been in place. *Id.* And his arguments that the current JCA allows a "kind of retroactive transfer hearing" immediately after convictions in adult court to

determine if offenders should be transferred to juvenile court have no relevance here because no such hearing was held 20 years ago.

Defendant's argument that, based on his background, and reports of juvenile transfers (which provide incomplete data), he is *unlikely* to have been transferred to adult court under the amended JCA misses the point. *See* Def. Br. 26-28.[5] Again, "punishable" as a felony means an offense which "might be" so punished, and a 17-year-old who commits a felony "might be" punished in adult court under the JCA transfer provisions, even today.

Moreover, while defendant claims he was someone who was meant to be "protect[ed] from" adult court, *id.* at 25-26, he fails to address the relevant factors of the transfer provisions, such as his criminal history and interest in rehabilitation. And, in fact, defendant had a significant criminal history, even before his 2002 conviction, and he has never shown interest in rehabilitation: before his 2002 conviction, he had two juvenile adjudications for which he received probation; he violated his probation each time rather than rehabilitating; in 2001, he was convicted of a felony in adult court; the next year he was convicted in adult court for his 2002 Class 1 felony; thereafter he had felony convictions for drug and weapons offenses, plus misdemeanor convictions, including domestic battery; and at the time of this trial, he faced multiple sex offense charges. Peo. Br. 3-4.

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[5] The reports defendant cites note the difficulty of collecting transfer data because "there is no one system or database" containing the data and no source has the data "readily available in all cases." Def. Appx. A70-71.

Finally, defendant ignores that the legislative history of the AHC Act shows that it was modeled on the federal Armed Career Criminal Act (ACCA), under which the conviction of a 17-year-old in adult court is a qualifying prior offense. *See id*. at 33-34. Defendant's assertion that the related federal cases cited by the People "contradict" the People's arguments is incorrect, Def. Br. 17, as those cases rely on a prior offense's statutory classification, not a defendant's personal characteristics, Peo. Br. 23, 33-34.

In sum, defendant offers no argument that would justify departing from the legislative intent behind the AHC Act as expressed in its plain language.

**D. *Stewart* does not support defendant's claim.**

The People's brief demonstrated that *People v. Stewart*, 2022 IL 126116, does not support defendant. Peo. Br. 31-34. A recent decision interpreting the AHC Act echoed the People's points:

> We also find defendant's reliance on *Stewart* misplaced. *Stewart*, while addressing a similar issue involving predicate offenses committed by juveniles, dealt with an entirely different statute, that involved Class X sentencing. . . . Although the Class X sentencing statute similarly required at least two predicate offenses before it could be utilized, that statute addresses a sentencing enhancement and not substantive offenses.
>
> The Class X sentencing enhancement "simply prescribe[s] the circumstances under which a defendant found guilty of a specific crime may be more severely punished because that defendant has a history of prior convictions," but the convictions are not elements of the most recent felony offense. The State has no burden to prove these convictions beyond a reasonable doubt. . . .

> Moreover, in *Stewart*, the supreme court found the Class X sentencing statutory language ambiguous and the matter resolved by subsequent legislation, which added a subsection elucidating that the first qualifying offense for Class X sentencing must have been committed when the person was 21 years of age or older. . . . As set forth, we do not find the [AHC Act] ambiguous, and even if we did, there is no subsequent legislation resolving the matter in defendant's favor.

*Wallace*, 2023 IL App (1st) 200917, ¶¶ 39-41 (citations omitted).

What little defendant says about *Stewart* is unpersuasive. Defendant notes that two of the People's arguments were raised in *Stewart*: (1) the decision below is unworkable as it requires a mini-trial regarding whether defendant's prior case would have been transferred to juvenile court; and (2) defendant impermissibly applies the JCA amendments retroactively. Def. Br. 20, 29. As defendant notes, the *Stewart* majority did not address those arguments, though the *Stewart* dissent found the People's position persuasive. *Id*. Those arguments should be addressed here, especially the concern about mini-trials, where prosecutors must prove that defendant's prior case would have been transferred to adult court under the amended JCA, though evidence relevant to that determination was not collected years ago and might not be easily recreated now. Accordingly, this Court should at least clarify the extent of the People's burden and the mechanics of carrying that burden at trial.

Defendant's argument that *Stewart* demonstrates the People have erred by focusing on the fact that age and jurisdiction are not elements of the offense, rather than addressing "whether the legislature intended the AHC

statute" to exempt felony convictions of juveniles from serving as prior qualifying offenses, *id.* at 24, ignores the nature of his own claim. The People focus on the fact that age and jurisdiction are not elements of AHC because, unlike *Stewart* (which addressed a sentencing claim), defendant has raised a sufficiency claim, and the decision below holds that the People must prove age and adult court jurisdiction beyond a reasonable doubt. *See Wallace*, 2023 IL App (1st) 200917, ¶¶ 39-41 (*Stewart* is inapposite because it did not involve a sufficiency claim).

In any event, as discussed, the purpose behind the AHC Act is clear: the General Assembly wants to prevent gun violence by making it illegal for habitual felons to possess guns. *Supra* p. 10. Therefore, to hold that felony convictions of 17-year-olds in adult court are qualifying prior convictions under the AHC Act — as other courts have, *supra* p. 2 — fulfills the legislature's intent. By contrast, defendant's interpretation requires this Court to believe that, despite serious concerns about gun violence, the legislature wants to ensure that the Act does *not* prevent habitual offenders convicted of adult felonies at 17 from possessing guns as adults.

Lastly, defendant dismisses the legislature's decision not to amend the AHC Act, Def. Br. 29-30, but he also admits that "the legislature's silence in the face of unanimous case law is a tacit 'acquiescence' in the court's interpretation of the statute." *Id.* And when the legislature enacted its omnibus amendments to the criminal code in 2021 (which amended the Class

X sentencing statute among many other things), existing precedent "squarely supported the principle that a conviction obtained when a criminal defendant was a minor could be used as a qualifying predicate offense." *Wallace*, 2023 IL App (1st) 200917, ¶ 43 (collecting cases). Thus, the lack of amendment to the AHC Act suggests tacit acquiescence that convictions of juveniles in adult court may serve as predicate offenses.

**E. The appellate court imposed the wrong remedy.**

Even if the appellate court were correct that prosecutors failed to prove defendant guilty of AHC, the remedy is to reduce his conviction to unlawful use of a weapon by a felon, *see* Peo. Br. 34-35, not to acquit him of all charges as the appellate court did. Defendant's only response — the People forfeited this argument — fails because the People may raise any argument supported by the record. *Supra* p. 5. Finally, when defending his alternative interpretation of the AHC Act, defendant relies on *People v. Fort*, 2017 IL 118966, where the Court remanded for a hearing to determine whether the defendant should receive an adult or juvenile sentence. Def. Br. 29. The People agree that, if this Court adopts defendant's interpretation of the AHC Act, then remand for a hearing on whether defendant would have been transferred is appropriate.

## III. Defendant's Ineffective Assistance Claim Is Meritless.

Defendant's claim that counsel erred by agreeing to a stipulation, rather than arguing that defendant's 2002 conviction is not a prior qualifying offense, *see* Def. Br. 31-33, is meritless. First, defendant's 2002 conviction is

a qualifying conviction under the plain language of the AHC Act, *supra* pp. 10-13, and counsel cannot be faulted for failing to raise a losing argument, *People v. Edwards*, 195 Ill. 2d 142, 165 (2001). Second, even if defendant were correct that his 2002 offense is not a qualifying conviction, counsel cannot be faulted for failing to raise such an argument because at the time of defendant's trial in 2019, controlling law "squarely supported the principle that a conviction obtained when a criminal defendant was a minor could be used as a qualifying predicate offense." *Wallace*, 2023 IL App (1st) 200917, ¶ 43 (denying ineffective assistance claim); Def. Br. 29-30 (identifying 2021 as the first split in authority). Third, there is no reasonable probability that arguing that defendant's 2002 conviction is not a qualifying conviction would have changed the result of trial because defendant has a second qualifying felony conviction from his 20s, *supra* p. 9, and prosecutors could have amended or refiled the indictment to include it as a predicate, *Rhodes*, 2021 IL App (1st) 190681-U, ¶¶ 20-23 (prosecutors may file superseding indictment to change predicate felonies underlying AHC).

## CONCLUSION

This Court should reverse the appellate court's judgment and remand for consideration of defendant's remaining claims.

November 21, 2023

Respectfully submitted,

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**RULE 341(c) CERTIFICATE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service is 5,667 words.

/s/ Michael L. Cebula
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## PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On November 21, 2023, the foregoing **Reply Brief of Plaintiff-Appellant People of the State of Illinois** was filed with the Clerk of the Supreme Court of Illinois, using the court's electronic filing system, which provided notice to the following registered email address:

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

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