NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2026 IL App (4th) 250579-U

NO. 4-25-0579

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 9, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Peoria County
ERIK T. ALEXANDER,	)	No. 24CF20
Defendant-Appellant.	)	
	)	Honorable
	)	Stephen A. Kouri,
	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices DeArmond and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding (1) the armed violence statute is not facially unconstitutional under the second amendment of the United States Constitution (U.S. Const., amend. II) and (2) defendant's as-applied constitutional challenge to the armed violence statute is premature.

¶ 2 In January 2024, defendant, Erik T. Alexander, was charged with one count of armed violence, a Class X felony (720 ILCS 5/33A-2(a) (West 2024)). The predicate felony underlying his armed violence conviction was possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2024)). A jury found defendant guilty of armed violence. Thereafter, the trial court sentenced him to 20 years' imprisonment.

¶ 3 On appeal, defendant argues the armed violence statute violates the second amendment of the United States Constitution (U.S. Const., amend. II) on its face and as applied to him. For the reasons that follow, we affirm.

¶ 4 I. BACKGROUND

¶ 5 In January 2024, the State charged defendant with one count of armed violence, a Class X felony (720 ILCS 5/33A-2(a) (West 2024)). The State alleged defendant, while armed with a handgun, knowingly possessed cocaine, a controlled substance (720 ILCS 570/402(c) (West 2024)).

¶ 6 In February 2025, the matter proceeded to a jury trial. The State presented testimony and body camera footage from the officers who arrested and searched defendant. At approximately 1 a.m. on January 3, 2024, Officer Austin Cisna of the Peoria County Sheriff's Office observed a pickup truck fail to properly signal a turn and stop at a stop sign. Cisna activated his squad car's emergency lights and sirens to initiate a traffic stop, but the pickup truck continued to drive away. Officer Dontay Logan of the Peoria Police Department observed Cisna attempting to pull over the pickup truck, so he decided to assist in the traffic stop. Shortly thereafter, the pickup truck struck a parked vehicle and came to a stop.

¶ 7 Cisna commanded the driver, later identified as defendant, to exit the pickup truck. Defendant refused, so Cisna and Logan removed him from the pickup truck and arrested him. When officers searched defendant, they found two small baggies containing a white, rock-like substance in his pocket. The parties stipulated that a portion of the substance, weighing 6.7 grams, tested positive for cocaine. Officers also searched the pickup truck and found a black Ruger magazine containing .40-caliber ammunition in the center console. The pickup truck's front passenger window was rolled down a couple of inches. In a nearby fenced-in yard, Cisna located a black and silver .40-caliber Ruger handgun loaded with a single .40-caliber bullet in the chamber.

¶ 8 The jury found defendant guilty of armed violence. Thereafter, the trial court sentenced defendant to 20 years' imprisonment.

¶ 9 Defendant appealed. In July 2026, this court granted defendant's motion for leave to cite additional authority.

¶ 10 II. ANALYSIS

¶ 11 On appeal, defendant argues the armed violence statute violates his second amendment rights under the United States Constitution (U.S. Const., amend. II), both facially and as applied to him.

¶ 12 " 'Statutes are presumed constitutional,' " and the reviewing court, if reasonably possible, must construe the statute so as to preserve its validity. *People v. Wallace*, 2026 IL App (4th) 250795, ¶ 95 (quoting *People v. Villareal*, 2023 IL 127318, ¶ 14), *appeal allowed*, No. 133332 (Sept. 30, 2026). The challenging party bears the heavy burden of establishing the unconstitutionality of the statute. *People v. Thompson*, 2025 IL 129965, ¶ 13. "A constitutional challenge to a statute may be either facial or as applied." *People v. Burns*, 2024 IL App (4th) 230428, ¶ 11 (citing *People v. Rizzo*, 2016 IL 118599, ¶ 24). "A facial challenge requires a showing that the statute is unconstitutional under any set of facts, whereas an as-applied challenge is dependent on the particular facts and circumstances of the challenging party." *People v. Hilliard*, 2023 IL 128186, ¶ 21. The constitutionality of a statute presents a question of law that we review *de novo*. *Burns*, 2024 IL App (4th) 230428, ¶ 10.

¶ 13 A. Facial Challenge

¶ 14 Defendant contends, pursuant to *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), blanketly prohibiting an individual from possessing a firearm while committing a felony under Illinois law violates the second amendment to the United States Constitution.

¶ 15 The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

U.S. Const., amend. II. "The United States Supreme Court has 'recognized that the Second and Fourteenth Amendments [(U.S. Const., amends. II, XIV)] protect the right of an ordinary, law-abiding citizen to possess a handgun' inside and outside the home 'for self-defense.' " *Burns*, 2024 IL App (4th) 230428, ¶ 14 (quoting *Bruen*, 597 U.S. at 8-9, and citing *District of Columbia v. Heller*, 554 U.S. 570, 595 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010)).

¶ 16 In this case, defendant was convicted under the armed violence statute, which provides: "A person commits armed violence when, while armed with a dangerous weapon, he commits any felony defined by Illinois Law," except for certain specified felonies not applicable here. 720 ILCS 5/33A-2(a) (West 2024). The predicate felony underlying defendant's armed violence conviction was possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2024)).

¶ 17 In *Bruen*, the United States Supreme Court announced the following test for determining the validity of laws whose constitutionality is challenged under the second amendment:

> "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.' " *Bruen*, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

Illinois courts have characterized the *Bruen* test as a two-part inquiry, which requires the court to ask " '(1) whether [the] defendant's conduct falls within the plain text of the second amendment

and, if so, (2) whether there is a justification for the regulation rooted in history and tradition.' " *People v. Smith*, 2025 IL App (5th) 230656, ¶ 17 (quoting *People v. Travis*, 2024 IL App (3d) 230113, ¶ 24).

¶ 18 Two districts of our appellate court recently addressed the issue of whether the armed violence statute is unconstitutional on its face. In *People v. Redmond*, 2025 IL App (1st) 231795, ¶ 31, the defendant was charged with, *inter alia*, armed violence (720 ILCS 5/33A-2(a) (West 2018)), with the predicate felony of possession of cannabis with the intent to deliver. The reviewing court rejected the defendant's facial challenge to the armed violence statute, reasoning as follows:

> "To begin, defendant's conduct is not protected by the 'plain text' of the second amendment. [Citation.] Although the second amendment protects the right of citizens to use arms for self-defense, *Bruen* specifically limits the second amendment's scope to citizens who are law-abiding, who are responsible, and who use firearms for self-defense. [Citation.] It, unequivocally, does not protect a defendant's right to possess a firearm while committing a felony." *Redmond*, 2025 IL App (1st) 231795, ¶ 40.

¶ 19 In *Smith*, 2025 IL App (5th) 230656, ¶ 3, the defendant was charged with armed violence (720 ILCS 5/33A-2(a) (West 2022)), with the predicate felony of possession of a controlled substance (cocaine) (720 ILCS 570/402(c) (West 2022)). On appeal, the reviewing court began by recognizing that "felons are not protected under the plain text of the second amendment." *Smith*, 2025 IL App (5th) 230656, ¶ 25 (citing cases). However, the court acknowledged the defendant "was not considered a 'felon' at the time he was charged." *Id.* Nevertheless, the court determined "that the federal court decisions holding that a felon is not a law-abiding citizen

protected under the second amendment extend to a defendant who is in the process of committing a felony while simultaneously possessing an operational firearm." *Id.* On that basis, the court held that "a defendant who is in the process of committing a felony while possessing an operational firearm does not fall into the category of 'the people' protected by the second amendment." *Id.*

¶ 20 Defendant urges this court to reject the reasoning of *Redmond* and *Smith* and instead follow the minority of appellate panels holding that felons are included in "the people" presumptively protected by the second amendment. See, *e.g.*, *People v. Stephens*, 2024 IL App (5th) 220828, ¶ 33; *Travis*, 2024 IL App (3d) 230113, ¶¶ 25-26; *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 89. We see no compelling reason to deviate from the reasoning of *Redmond* or *Smith*. Significantly, even the districts of our appellate court that found felons are part of "the people" to whom the second amendment applies nevertheless concluded under the second step of *Bruen* that statutes prohibiting felons from possessing firearms were consistent with this nation's historical tradition of firearm regulation and, therefore, facially constitutional. *Stephens*, 2024 IL App (5th) 220828, ¶ 39; *Travis*, 2024 IL App (3d) 230113, ¶ 33; *Brooks*, 2023 IL App (1st) 200435, ¶ 105. Moreover, *Redmond* and *Smith* are consistent with this court's holding in *Burns*, where we determined that felons are not law-abiding citizens and are thus not presumptively protected by the plain text of the second amendment. See *Burns*, 2024 IL App (4th) 230428, ¶ 21; *Wallace*, 2026 IL App (4th) 250795, ¶ 100 (collecting cases reaffirming *Burns*). We decline to depart from our holding in *Burns*.

¶ 21 We briefly address the argument raised by defendant in his motion to cite additional authority. In his motion, defendant suggests the United States Supreme Court abandoned any inquiry into whether a defendant is a law-abiding citizen in *United States v. Hemani*, 608 U.S. 772 (2026). In *Hemani*, the government conducted a search of the defendant's home. *Id.* at 778. The

defendant willingly surrendered a gun and some cannabis he kept on his property and later told investigators during an interview that he used cannabis " 'about every other day.' " *Id.* The government indicted the defendant under section 922(g)(3) of title 18 of the United States Code (18 U.S.C. § 922(g)(3) (2018)) for knowingly possessing a gun while being an unlawful user of a controlled substance, punishable by up to 15 years in prison. *Id.* at 779. The defendant moved to dismiss the indictment, arguing the government's application of section 922(g)(3) as to him violated the second amendment. *Id.* In applying the first step of *Bruen*, the *Hemani* court found:

> "[The government] agrees *** that § 922(g)(3)'s unlawful user provision burdens conduct presumptively protected by the Second Amendment. After all, that statute bans a class of people including [the defendant] from possessing essentially any firearm for any purpose. As a result, the government acknowledges, it has a burden to carry." *Id.* at 781.

After finding the government failed to carry its burden in identifying a relevantly similar historical analogue under the second step of *Bruen*, the court held section 922(g)(3) was unconstitutional as applied to the defendant. *Id.* at 794-95. Notably, in describing its narrow holding, the *Hemani* majority remarked: "We do not address 18 U.S.C. § 922(g)(1)'s provision disarming individuals convicted of felonies (often including drug-related ones)." *Id.* at 794.

¶ 22 We disagree with defendant. A more plausible reading of *Hemani* is that, in finding section 922(g)(3) as applied to the defendant was unconstitutional, the Supreme Court implicitly held the fact the defendant was a user of cannabis was insufficient to show he was not a law-abiding citizen. We find this reading more plausible given that the Supreme Court in *Heller* and later *Bruen* repeatedly emphasized that the second amendment protects the rights of law-abiding citizens to possess firearms for self-defense purposes. See *Heller*, 554 U.S. at 635 (opining the

second amendment "surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home); *Bruen*, 597 U.S. 1 *passim* (referencing some form of "law-abiding citizen" 18 times among the majority and concurring opinions). We are unconvinced the Supreme Court meant to do away with any consideration of whether a defendant is a law-abiding citizen based on its failure to explicitly use the phrase "law-abiding" in *Hemani*.

¶ 23 Ultimately, to prevail on his facial challenge, defendant must show that every application of the prohibition on firearm possession while simultaneously committing a felony is unconstitutional. There are some applications of the armed violence statute which are obviously lawful, as we have found individuals who simultaneously commit a felony while possessing a firearm are not presumptively protected by the plain text of the second amendment. See *Smith*, 2025 IL App (5th) 230656, ¶ 25; see also *Burns*, 2024 IL App (4th) 230428, ¶ 21. Accordingly, because the armed violence statute is constitutional in at least some circumstances, defendant cannot succeed on his facial challenge.

¶ 24 B. As-Applied Challenge

¶ 25 Defendant asserts the armed violence statute is unconstitutional as applied to him. He acknowledges he failed to raise this argument in the trial court but contends the factual record is adequate to address his claim. The State agrees there is sufficient evidence for this court to consider defendant's as-applied challenge. However, this court is not bound by the parties' agreement. *People v. Johnson*, 2024 IL App (1st) 231155, ¶ 27. For the following reasons, we find defendant's as-applied challenge premature.

¶ 26 Because as-applied claims are predicated on the specific facts and circumstances of the challenging party, "it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." *People v. Thompson*, 2015 IL 118151,

¶ 37. "A reviewing court cannot determine whether a statute is unconstitutional 'as applied' where there has been no evidentiary hearing and no findings of fact." *People v. Benson*, 2026 IL 131191, ¶ 20 (citing *In re Parentage of John M.*, 212 Ill. 2d 253, 268 (2004)). "Without an evidentiary record, any finding that a statute is unconstitutional as applied is premature." (Internal quotation marks omitted.) *Rizzo*, 2016 IL 118599, ¶ 26.

¶ 27 In *People v. Holman*, 2017 IL 120655, ¶ 32, our supreme court recognized a "very narrow exception" to this rule where all the facts and circumstances necessary to resolving a constitutional claim were already in the record. There, the court chose to address the merits of the defendant's claim that his sentence was unconstitutional based on *Miller v. Alabama*, 567 U.S. 460 (2012), because *Miller* claims only required a showing that (1) the defendant's life sentence was mandatory and (2) he was a juvenile at the time of the offense. *Id.* ¶¶ 32-33.

¶ 28 Recently, our supreme court clarified the strict confines of the *Holman* exception and signaled a strong disfavor toward deciding certain as-applied second amendment claims for the first time on appellate review. *Benson*, 2026 IL 131191, ¶ 38. In *Benson*, the defendant raised his as-applied challenge to his unlawful possession of a weapon by a felon (UPWF) (720 ILCS 5/24-1.1(a) (West 2020)) conviction for the first time on appeal. *Id.* ¶ 16. The *Benson* court stressed that *Holman* created "a '*very narrow* exception' to the requirement that a party must first raise an as-applied constitutional challenge in the [trial] court." (Emphasis added.) *Id.* ¶ 21. The court distinguished the fact-dependent nature of as-applied claims to UPWF convictions from the more straightforward *Miller* claims. *Id.* ¶¶ 21-22. As such, the court declined "to broaden *Holman*'s narrow exception, for *Miller* claims of juveniles sentenced to mandatory life in prison, to include as-applied challenges to UPWF convictions on the basis of a claim that the underlying felony is not dangerous." *Id.* ¶ 38.

¶ 29 We find the *Benson* court's reasoning extends to as-applied challenges to convictions under the armed violence statute. Like *Benson*, defendant here raises an as-applied second amendment claim, arguing his constitutional rights were violated because his predicate felony did not involve "dangerous conduct." Specifically, he argues the record contained no evidence that he used the gun or was under the influence of drugs at the time of the offense.

¶ 30 We acknowledge that, unlike *Benson*, where the record was devoid of the facts and circumstances surrounding the defendant's underlying felony, the record here as to defendant's predicate felony was developed, to some extent, at trial. However, because he did not raise his as-applied challenge in the trial court, there was no evidentiary hearing or findings of fact on this issue. See *People v. Childers*, 2026 IL App (4th) 250647-U, ¶¶ 67-68 (declining to reach the defendant's as-applied second amendment challenge to the armed violence statute where there was no evidentiary hearing or findings of fact in the trial court). Similarly, the record lacks any individualized assessment as to how the nature of defendant's predicate felony, a drug possession offense, affects his as-applied claim. See *Burns*, 2024 IL App (4th) 230428, ¶ 17 (declining to address the defendant's as-applied challenge to the UPWF statute where there was no consideration as to how the nature of his prior felony affected his claim). Accordingly, any finding that the armed violence statute is unconstitutional as applied to defendant would be premature.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we affirm the trial court's judgment.

¶ 33 Affirmed.