2026 IL App (1st) 250609-U
No. 1-25-0609
Order filed November 4, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23 and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

RAUL CALVILLO, a/k/a Raul Cavillo, Defendant-Apellant

Appeal from the Circuit Court of Cook County.
Honorable Alfredo Maldonado, Judge, presiding.
No. 01 CR 11037

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Quish and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction is affirmed, where statute under which he was convicted was not unconstitutional on its face or as applied to defendant.

¶ 2 Defendant-appellant, Raul Calvillo, a/k/a Raul Cavillo, appeals his conviction for aggravated unlawful use of a weapon (AUUW), contending that the statute under which he was convicted is unconstitutional both on its face and as applied to defendant. For the following reasons, we affirm.

¶ 3 Many of the prior proceedings in this matter were fully set out in our prior opinion, entered upon our resolution of defendant's prior appeal, and need not be fully restated here. See *People v. Calvillo*, 2022 IL App (1st) 200886. We therefore restate only those facts necessary to resolve this appeal, with portions taken from our prior opinion.

¶ 4 In 2001, the State charged defendant with six counts of AUUW in case number 01-CR-11037, for offenses he allegedly committed when he was 17 years old. The case proceeded to a bench trial, after which the circuit court found defendant guilty of two counts of AUUW: count I was for possessing an uncased firearm in public (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2000)) and count III was for possession of a firearm before reaching the age of 21 (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2000)). On October 9, 2002, the circuit court merged count III into count I under the one-act, one-crime doctrine, because it found that count III was the lesser offense and sentenced defendant to one-and-a-half years of probation on count I. As count III merged into count I, the circuit court imposed no sentence on count III. On September 19, 2003, the circuit court revoked defendant's probation and sentenced him to one year in prison on count I.

¶ 5 In 2006, in case number 06-CR-15198, defendant pleaded guilty to unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1(a) (West 2006)) and was sentenced to three years' imprisonment. Defendant's 2002 conviction for AUUW in count I was the predicate felony for the 2006 UUWF conviction. The sentences for both the 2002 and 2006 convictions have been completed.

¶ 6 In 2019, defendant filed two petitions pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2018)) seeking to vacate his 2002 AUUW conviction and his 2006 UUWF conviction based on *People v. Aguilar*, 2013 IL 112116, *In re N.G.*, 2018 IL 121939, and their progeny. In his first petition, defendant argued that his 2002 conviction for AUUW on count I was void *ab initio* under *Aguilar* and should be vacated. In his second section 2-1401 petition, defendant argued that his 2006 conviction for UUWF was predicated on the unconstitutional 2002 AUUW conviction in count I. As the 2002 AUUW conviction in count I

was void *ab initio*, defendant asserted that it cannot serve as the predicate offense for the UUWF conviction. Therefore, defendant requested that the UUWF conviction be vacated.

¶ 7 In September 2019, the circuit court issued a written order on the two petitions in which it "transferred" the sentence it had previously imposed from count I to count III, *nunc pro tunc*, to preserve the date of defendant's 2002 AUUW conviction. This was necessary to ensure the vitality of the later 2006 conviction for UUWF. As such, the circuit court also determined that its *nunc pro tunc* order was sufficient to allow the newly sentenced conviction on count III to serve as the predicate felony for the 2006 conviction for UUWF. Defendant appealed.

¶ 8 In a 2022 opinion resolving that prior appeal, this court vacated the "transferred" sentence on count III because *nunc pro tunc* orders cannot be used "to retroactively correct an [...] error involving the merits of the case." *Calvillo*, 2022 IL App (1st) 200886, ¶ 19. We therefore remanded "for a new sentencing hearing on the constitutionally valid finding of guilt on count III for possessing a firearm before the age of 21 in violation of section 24-1.6(a)(3)(I) of the AUUW statute." *Id*. ¶ 21. We also concluded that because we were "reversing the *nunc pro tunc* order, vacating petitioner's sentence on count III, and remanding for a new sentencing hearing on count III *** the new sentence imposed on count III will transform the finding of guilt into a conviction for AUUW, but the conviction will not be retroactive to either October 9, 2002, or September 19, 2003, and thus it cannot serve as the predicate offense for petitioner's 2006 conviction for UUWF." *Id*. ¶ 28. We therefore vacated the 2006 conviction. *Id*. ¶ 30.

¶ 9 On remand, the circuit court sentenced defendant to one year in prison with six months of mandatory supervised release on count III and found that defendant had already "satisfied the sentence in its entirety." Defendant now appeals.

¶ 10 On appeal, defendant contends that the AUUW statue under which he was convicted (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2000)) is unconstitutional on its face and as applied to defendant, where he was 17 years old at the time of the offense. He specifically contends that it violates the second amendment, which 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. We disagree.

¶ 11 We review a constitutional challenge to a statute *de novo* because it presents a question of law. *People v. Masterson*, 2011 IL 110072, ¶ 23. Legislative enactments have a strong presumption of constitutionality, and this court must uphold the constitutionality of a statute when reasonably possible. *Id*. A defendant challenging the constitutionality of a statute bears the burden to prove the statute's invalidity. *Id.*

¶ 12 As to defendant's facial challenge, which is the most difficult type of constitutional challenge, an enactment is invalid on its face only if no set of circumstances exists under which it would be valid. *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20. A facial challenge requires a showing that the statute is unconstitutional under any set of facts; the specific facts related to the challenging party are irrelevant. *People v. Garvin*, 219 Ill. 2d 104, 117 (2006). "An as-applied challenge to a statute's constitutionality requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 51. "If it is reasonably possible to construe the statute in a way that preserves its constitutionality, we must do so." *People v. Bochenek*, 2021 IL 125889, ¶ 10.

¶ 13 We need not discuss defendant's facial and as applied constitutional challenges in any detail, as the arguments he raises on appeal have all been considered and rejected in prior decisions. Specifically, our supreme court has previously considered and rejected age-based facial and as

applied challenges under the second amendment and upheld the statutory provisions at issue. *People v. Mosley*, 2015 IL 115872, ¶¶ 33-38; *In re Jordan G.*, 2015 IL 116834, ¶¶ 21-25; *People v. Aguilar*, 2013 IL 112116, ¶¶ 24-28.

¶ 14 Nevertheless, defendant contends that these decisions are not controlling, as they predate the United States Supreme Court decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). As this court previously stated, prior to that decision:

> "reviewing courts generally applied a two-part analysis in determining whether a restriction violated the second amendment, first (1) asking whether the challenged law regulated activity falling outside the scope of the right as originally understood, followed by (2) employing a means-end analysis to determine how close the law came to the core of the second amendment right and the severity of the law's burden on that right. [Citation.] In 2022, the Supreme Court, however, disapproved of this approach in *Bruen*, expressly finding that '[d]espite the popularity of this two-step approach, it is one step too many.' [Citation.]" *People v. Doehring*, 2024 IL App (1st) 230384, ¶ 21.

According to *Bruen*:

> "[W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the

> Second Amendment's 'unqualified command.' " *Bruen*, 597 U.S. at 17 (quoting *Konigsberg v. State Bar of California*, 366 U.S. 36, 50 n.10 (1961)).

¶ 15 However, as defendant himself recognizes, this exact argument has been made and rejected by this court on several prior occasions. *In the Interest of C.P.*, 2023 IL App (1st) 231033-U, ¶¶ 3, 16; *People v. Lewis*, 2024 IL App (1st) 230568-U, ¶ 23; *People v. Doehring*, 2024 IL App (1st) 230384, ¶ 31; *People v. Thompson*, 2024 IL App (1st) 221031, ¶ 35. We need not restate the analysis contained in those decisions here. It is sufficient to state that, as we have previously:

> "our supreme court has upheld age-based restrictions on firearm regulations multiple times *** While these decisions predate *Bruen* and, therefore, do not contain precisely the same analysis as set forth therein, our supreme court nevertheless based its reasoning in each case on a finding that there was a long historical tradition of firearm restrictions with respect to minors and that historical tradition remains equally relevant to our analysis today." *Doehring*, 2024 IL App (1st) 230384, ¶ 31.

¶ 16 We reach the same conclusion here. "Under the binding precedents of *Mosley*, *Jordan G.*, and *Aguilar*, respondent's facial and as-applied challenges to subsection (a)(3)(I) of the AUUW statute *** all fail." *Interest of C.P.*, 2023 IL App (1st) 231033-U, ¶ 18. As such, we affirm defendant's conviction.

¶ 17 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 18 Affirmed.