Order filed March 5, 2026. 2026 IL App (5th) 231356-U
Modified upon denial of
rehearing April 3, 2026. NO. 5-23-1356

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Champaign County.
	)	
v.	)	No. 21-CF-882
	)	
REONTE R. WILLIAMS,	)	Honorable
	)	Roger B. Webber,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Presiding Justice Cates and Justice Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction and sentence on the offense of armed violence, where the State presented sufficient evidence for the jury to find defendant guilty beyond a reasonable doubt. Defendant failed to establish that the armed violence and aggravated unlawful use of a weapon statutes were unconstitutional, either facially or as applied to him, under the United States Constitution.

¶ 2 A jury found defendant, Reonte R. Williams, guilty of armed violence (720 ILCS 5/33A-2(a) (West 2020)), aggravated unlawful use of a weapon (AUUW) (*id.* § 24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C)), and driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2020)). The trial court sentenced him to concurrent sentences of 18 years in prison for the offense of armed violence, followed by 18 months of mandatory supervised release (MSR), 2 years for the offense of AUUW followed by 18 months of MSR, and 180 days for the DUI offense. Defendant

appeals the court's denial of his motion to reconsider, arguing that the State failed to present sufficient evidence to convict defendant of armed violence, where the State failed to prove the predicate underlying felony offense of unlawful possession of cannabis by failing to prove defendant unlawfully possessed over 100 grams of cannabis (720 ILCS 550/4(d) (West 2020)). As such, defendant requests this court reduce his armed violence conviction (Class 4 felony) to the lesser-included offense of unlawful possession of cannabis (Class A misdemeanor). Alternatively, defendant argues that the AUUW and armed violence statutes violate his second amendment right to carry a firearm outside the home for self-defense both facially and as applied to defendant. For the following reasons, we affirm.

¶ 3 I. Background

¶ 4 On July 28, 2021, the State charged defendant by four-count information with armed violence (count I) (720 ILCS 5/33A-2(a) (West 2020)), a Class X felony; unlawful possession with intent to deliver cannabis (count II) (720 ILCS 550/5(d) (West 2020)), a Class 3 felony; AUUW (count III) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C) (West 2020)), a Class 4 felony; and DUI (count IV) (625 ILCS 5/11-501(a)(2) (West 2020)), a Class A misdemeanor. Specific to the charge of armed violence, the State alleged that defendant, while armed with a Category I weapon, an ATI AR15-style rifle, committed the offense of unlawful possession of cannabis, wherein defendant knowingly possessed more than 100 grams but not more than 500 grams of cannabis. The State further alleged that defendant, a person 18 years or older, knowingly carried an uncased, loaded, and immediately accessible firearm in his vehicle without a currently valid license or Firearm Owner's Identification (FOID) card.

¶ 5 On September 11, 12, and 13, 2023, the trial court held defendant's jury trial. During opening statements, defense counsel stated that defendant "fully admits that he committed th[e]

offenses" of AUUW and DUI. Defense counsel stated, however, that defendant denied committing the offenses of armed violence and possession with intent to deliver cannabis. The evidence adduced at trial demonstrated that Officer Bradley McCormack of the Urbana Police Department responded to a call for a welfare check on a driver passed out at the wheel in the drive-through lane of a McDonald's on July 28, 2021, at approximately 4:30 a.m. Upon arriving, Officer McCormack observed a Kia Optima in the McDonald's drive-through lane. Officer McCormack observed the vehicle engine running and a driver unconscious in the front seat. After several attempts to arouse defendant by pounding on the car window, shining a flashlight in defendant's face, and shouting, Officer McCormack opened the unlocked driver's side door, turned off the engine, and removed the keys from the vehicle. After performing a "sternum rub" on defendant's chest, defendant woke up, at which point Officer McCormack noticed defendant had slurred speech, red glassy eyes, and slow and sluggish movements. Officer McCormack testified that he noticed the smell of cannabis and also smelled alcohol on defendant's breath.

¶ 6 Officer Kamden Kaufman of the Urbana Police Department arrived shortly after as backup, at which time, he stood on the passenger side of defendant's vehicle as Officer McCormack spoke to defendant. While shining a flashlight into the back passenger seat, Officer Kaufman observed an AR-style rifle covered by a liquor store bag and an empty tequila box. Officer Kaufman testified that the rifle was viewable and accessible to defendant in the driver's seat. The officers immediately instructed defendant to exit the vehicle. As defendant exited, Officer McCormack observed a half empty bottle of tequila at defendant's feet. After defendant exited the vehicle, the officers confirmed that defendant did not have a weapon on his person but had $200 in cash in his pocket (two $50 bills and one $100 bill). Officer Kaufman secured the loaded AR-style rifle containing 30 rounds of ammunition.

¶ 7 A search of defendant's vehicle revealed two large, separately packaged, clear bags of cannabis—one bag was located on the back seat behind the driver's seat and the other was located in the front of the car in an open area, or "cubby," under the radio. Officer Kaufman testified that the two separately packaged, clear plastic bags contained a large amount of plant material that, in his experience, was illegally packaged. Officer Kaufman clarified that the two clear bags were not packaged in traceable, odor proof, sealed containers, which demonstrated the contents were not legally packaged. In addition, the officers confiscated a box of clear sandwich bags, a digital scale in the center console with "shake" on it, referring to "crumbs of cannabis," as well as several items in the driver's side door, including a second smaller digital scale, "a wad of cash" totaling $180 (seven $20 bills and $41 in dollar bills), and "green leafy" cannabis. Officers also collected "legally packaged" marijuana in three different odor proof, sealed containers in the center console that "looked like it was bought from the store." The search also revealed a black ledger found in the glove box.

¶ 8 Sergeant Matthew McKinney of the Urbana Police Department testified that, in his experience, drug dealers often use "drug ledgers" to list their contacts in "code." Sergeant McKinney agreed that defendant's black ledger book did not reference cash or specific amounts of substances but included names, phone numbers, and "some other kind of slang terms." Sergeant McKinney clarified that, in his experience, the ledger was not a regular address book, given officers found it in the same vehicle as the other items listed above.

¶ 9 During the interaction with defendant, the officers wore body cameras, and the State admitted and showed the video to the jury. The body camera video demonstrated that defendant admitted to the officers that he did not have a FOID card or concealed carry license (CCL) in Illinois. Defendant also admitted that he drank alcohol with friends around midnight. Defendant

stated that he frequently used marijuana and possessed the digital scales to weigh the marijuana he bought for his own personal use. Defendant also stated that the cannabis in his car was for personal use, stating that he thought he had about two ounces, or 56-57 grams, of cannabis in his possession at the time of the search.

¶ 10 Officer McCormack testified that at no point during his interaction with defendant did he state that the cannabis belonged to someone else. Officer McCormack also testified that defendant claimed that the large amount of money found in his vehicle and on his person was from working at a landscaping business. Defendant denied that the rifle belonged to him. The officers subsequently arrested defendant and transported him to jail where defendant refused to take a breathalyzer test. Officer McCormack testified that he charged defendant with a DUI based on the totality of the circumstances.

¶ 11 Following the testimony of Officers McCormack and Kaufman and Sergeant McKinney, the parties entered into a written stipulation that Kristin Stiefvater, a forensic scientist with the Illinois State Police (ISP) and expert witness in the field of forensic chemistry, performed a weight analysis of the cannabis discovered in defendant's vehicle and conducted tests to determine the presence of cannabis. Stiefvater confirmed that the weight analysis revealed that the contents of the two plastic baggies discovered by police weighed 99.8 grams together, while the contents of the three containers weighed 161.7 grams "of a substance containing delta 9-tetrahydrocannabinol, also known as cannabis" or commonly referred to as THC. Following the parties' written stipulation as to Stiefvater, the State called Brian Long, a forensic scientist with the ISP with specialized training in the examination of latent prints. Long testified that a fingerprint analysis confirmed defendant's fingerprint on the scope of the rifle discovered in the back seat and seized from defendant's vehicle on July 28, 2021.

¶ 12 Following the close of the State's evidence, defense counsel moved for a directed verdict, arguing that the State failed to meet its burden as to all charges. The trial court denied defense counsel's motion, and defendant presented the following evidence. Deresheo Carter, a friend of defendant, testified that defendant picked him up around 9:30 p.m. on July 27, 2021, to drive to a liquor store. Defendant and Carter then drove around drinking and smoking "7, 8 blunts" together. Defendant dropped off Carter at Carter's girlfriend's house around 2:45 a.m. on July 28, 2021.

¶ 13 At some point the next day, Carter realized that he did not have his "weed *** bag and *** edibles." Carter testified that he "forgot [he] had set [his] bag on the back seat of marijuana and my edibles that I had in my bag." Carter testified that a friend informed him that police arrested defendant early in the morning. Carter confirmed that he and defendant were housed in the same cell block from January to March 2022, testifying that he wrote an affidavit during that time on behalf of defendant. Carter stated that he wrote the affidavit to "let it be known" that he left his "bag of marijuana and edibles in [defendant's] car." Carter denied ownership of the seized firearm and knowledge that a firearm was present in the vehicle. On cross-examination, Carter confirmed that he left his bag of marijuana and edibles in the back seat of defendant's car.

¶ 14 Defendant testified on his own behalf. Defendant stated that he drank and smoked "a lot" on July 27 and 28, 2021. Defendant denied ownership of the firearm but confirmed that he handled the weapon. Defendant clarified that he was in possession of the weapon and driving under the influence. Thus, he was not asking the jury to find him not guilty of these specific charges. Defendant confirmed that he picked up Carter on July 27, 2021, drove to the liquor store, and then drove around with Carter while drinking tequila and smoking marijuana before he dropped off Carter at his girlfriend's house. Defendant testified that he had one bag of marijuana in the car that belonged to him and was unaware that Carter left his "stuff" in his car. According to defendant, he

had cash on him to avoid his bank "locking [his] cards" during his recent out-of-state travel. Defendant also testified that he had some twenties and a "stack of ones" in his car to "build[ ] up [his daughter's] piggy bank." According to defendant, he had digital scales with him to weigh the marijuana he bought off the street. Defendant denied that he sold marijuana, testifying that he consumed "about a half ounce" of marijuana daily. According to defendant, Carter offered to write an affidavit on defendant's behalf while they were in custody together. Defendant maintained that the majority of the marijuana in the vehicle belonged to Carter, not defendant. Following defendant's testimony, defense counsel moved for a directed verdict, which the trial court denied.

¶ 15 During closing arguments, the State, in arguing defendant was guilty of armed violence, asserted that defendant possessed a loaded, dangerous weapon and "over 200 grams of cannabis," which the parties stipulated to, with some in plastic bags—located both in a cubby under the radio and behind the driver's seat—and some in the "little jars" in the center console. The State asserted that both the gun and cannabis were accessible to defendant while in his car. Finally, the State argued that defendant's story on the night of his arrest and at trial were different, stating: "So we see his demeanor that night talking with officers. Cannabis is all mine, not the gun. Change of story today. The gun is mine, but not all the cannabis is mine."

¶ 16 Defense counsel responded that defendant was only asking the jury to find him not guilty of armed violence and unlawful possession with intent to deliver cannabis. Defense counsel reiterated that the three jars of cannabis weighed 161.7 grams, and the plastic bags of cannabis weighed 99.8 grams; however, he asserted that only two ounces, or 57 grams of cannabis, belonged to defendant. Defense counsel stated:

> "Why is that important? Because [defendant] told the officer he had two ounces of weed. If he had two ounces of weed that perfectly accounts for—because if 57 grams—58

> grams is two ounces, okay. Four ounces is gonna [*sic*] be over a hundred [ounces]. Okay. And what do we know? That when they took Mr. Carter's bag of weed out of the back seat and [defendant's] bag of weed out of the cubby underneath the radio and put them together, those two bags weighed 99.8 grams. You divide that roughly in half, you get the amount of weed that [defendant] said he had."

As such, defense counsel argued that defendant did not have knowledge that Carter "left his stash [of cannabis] in [defendant's] car." Following all evidence and closing statements, the jury found defendant guilty of armed violence, AUUW, and DUI. The jury acquitted defendant of the offense of unlawful possession with intent to deliver cannabis.

¶ 17 On October 16, 2023, defendant filed a motion for acquittal, or in the alternative, a motion for a new trial. Defendant argued, *inter alia*, that defense counsel failed to present evidence and argue to the jury that the "marijuana packaged in jars contained in the car was legally packaged and therefore should not have been considered as part of the total amount of marijuana possessed."

¶ 18 The presentence investigation (PSI) report demonstrated that defendant was 24 years old. Defendant reported that he was a daily marijuana user and that he began using cocaine at age 12. According to the PSI, defendant did not have a juvenile criminal history, and his adult criminal history included the following: a 2016 registration expiration; a 2018 possession of cannabis, a Class B misdemeanor; and a 2018 traffic violation for driving 21-25 miles per hour above the limit.

¶ 19 On November 3, 2023, the trial court held a hearing on defendant's posttrial motion and defendant's sentencing hearing. In first addressing defendant's motion for acquittal, or in the alternative, a motion for a new trial, defense counsel claimed that "[his] argument could have been and probably should have been that the law in Illinois does allow for the legal possession and use of recreational marijuana if you are 21 or over." In arguing that the legally packaged cannabis

should not have been considered part of the total amount of marijuana possessed, defense counsel asserted:

> "I did not find any case law directly on point, I suspect because the charge of armed violence is not new, but recreational cannabis is still relatively new. So to be blunt, I don't know whether or not it makes a difference, but I should have made the argument."

Defense counsel asserted that without the weight of lawfully packaged jars of cannabis, the total weight of the unlawfully packaged cannabis was under 100 grams.

¶ 20 The following colloquy took place:

> "THE COURT: So without the legally packaged gummies, there—the State wouldn't have proven the hundred gram threshold.
>
> [DEFENSE COUNSEL]: And I would also note, [Y]our Honor, the specific charge is a hundred to 500 grams other than as authorized by the Cannabis Control Act. I would think the argument would be that those three jars were authorized by the Cannabis Control Act.
>
> [THE STATE]: Your Honor, but under the law there is exceptions and rules as to pertaining what can be in a vehicle, which that amount is over the 30 grams that would be allowed to be bought and possessed legally.
>
> THE COURT: Okay. All right. And—and I think there's a difference between possessing a legal quantity of cannabis, which [the State] points out, even though it was perhaps legally packaged, the quantity is over the amount you can have in a vehicle. Plus I think the focus of the armed violence was, if you have a gun and possess cannabis, that itself is a crime. Although it does say other than legally possessed, as pointed out. But I think given the clarification by [the State], the charge stands.
>
> There clearly was sufficient evidence. There was a firearm, a rifle found in the back seat, partially covered with a sweatshirt or clothing. But it did have the defendant's DNA and fingerprint *** that matched the defendant's on the scope. So the question is not ownership but possession of the gun. He was the sole occupant of the vehicle at the time of the stop.
>
> Same is *** true with the cannabis. It's possession, not ownership. So I think the evidence was sufficient. ***"

¶ 21 Following the trial court's denial of defendant's posttrial motion, the court sentenced defendant to concurrent sentences to be served at 50% of 18 years in prison for armed violence followed by 18 months of MSR and 2 years for AUUW followed by 18 months of MSR, and 180

days for the DUI conviction. Defendant subsequently filed a motion to reconsider sentence on December 4, 2023, which the court denied. Defendant filed a timely notice of appeal.

¶ 22 II. Analysis

¶ 23 Defendant argues first on appeal that no reasonable trier of fact could have found him guilty beyond a reasonable doubt of armed violence, where the State failed to present sufficient evidence that defendant unlawfully possessed over 100 grams of cannabis. More specifically, defendant asserts that the State offered no testimony or argument regarding the weight of the THC within the commercially packaged cannabis-infused product, and whether it exceeded the legal amount of "no more than 500 milligrams of THC contained in cannabis-infused product," pursuant to section 10-10 of the Cannabis Regulation and Tax Act (410 ILCS 705/10-10(a)(2) (eff. June 25, 2019)). Because the State proved only the total weight of the contents of—not the amount of THC contained within—the three commercially packaged containers, totaling 161.7 grams, defendant argues that the State failed to prove whether the legally packaged cannabis-infused product exceeded the amount of THC he could lawfully possess (*i.e.*, less than 500 milligrams of THC). As such, defendant requests this court reduce his armed violence conviction (Class 4 felony) to the lesser-included offense of unlawful possession of cannabis (Class A misdemeanor).

¶ 24 In response, the State asserts that defendant's argument attempts to alter the elements of the State's case with reliance on the Cannabis Regulation and Tax Act, asserting that the amount of THC contained in the three containers of legally packaged cannabis-infused product seized by police is irrelevant. We agree with the State.

¶ 25 The critical inquiry on review of a sufficiency of the evidence claim is whether, after reviewing all of the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v.*

Cunningham, 212 Ill. 2d 274, 278 (2004). On review, all of the evidence is considered in the light most favorable to the prosecution. *People v. Furby*, 138 Ill. 2d 434, 455 (1990) (citing *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). It is the jury's responsibility to determine the witnesses' credibility and the weight to be given to their testimony, to resolve conflicts of evidence, and to draw reasonable inferences from the evidence. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). We will not substitute our judgment for that of the jury on these matters. *Id.* We will not set aside a conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Cox*, 195 Ill. 2d 378, 387 (2001).

¶ 26 In Illinois, a person commits armed violence when, "while armed with a dangerous weapon, he commits any felony defined by Illinois Law ***." 720 ILCS 5/33A-2(a) (West 2020). A person is armed with a dangerous weapon when he carries on or about his person or is otherwise armed with a Category I or Category II weapon. *Id.* § 33A-1(a). Here, defendant possessed within close proximity to his person a Category I weapon—a semiautomatic ATI AR15-style rifle—at the time officers discovered him unconscious in the driver's seat of his vehicle in a McDonald's drive-through lane. *Id.* § 33A-1(c)(2).

¶ 27 Moreover, an essential element of armed violence is the commission of a predicate underlying felony while armed, here, the unlawful possession of cannabis, which the State must prove beyond a reasonable doubt. In order to prove defendant guilty beyond a reasonable doubt of unlawful possession of cannabis, the State must prove defendant had knowledge of the presence of a substance containing cannabis and defendant had cannabis in his immediate and exclusive possession or control. 720 ILCS 550/4 (West 2020). Here, it is undisputed that defendant had two bags of illegally packaged cannabis in his vehicle and three individually packaged, store bought containers of cannabis. As stipulated to by both parties, the first amount, weighing 99.8 grams,

consisted of two plastic bags of unlawfully packaged marijuana, while the other amount, weighing 161.7 grams, consisted of three jars of legally packaged, store bought marijuana or edibles. The evidence also demonstrated that the cannabis was in defendant's immediate and exclusive possession or control.

¶ 28 Furthermore, the State must also prove beyond a reasonable doubt the weight of the substance in order to sustain a conviction for armed violence. *People v. Jones*, 174 Ill. 2d 427, 428-29 (1996) (When "there is a lesser included offense of possession of a smaller amount, then the weight of the seized drug is an essential element of the crime and must be proved beyond a reasonable doubt."). As such, pursuant to the unlawful possession of cannabis statute, a defendant commits a Class 4 felony when he possesses "more than 100 grams but not more than 500 grams of any substance containing cannabis." 720 ILCS 550/4(d) (West 2020). Despite this, defendant argues that, because cannabis is no longer *per se* illegal in Illinois, "it is not a matter of simply adding the weight of cannabis-containing substances to reach a given total." Rather, he argues that because the Cannabis Regulation and Tax Act treats cannabis-infused products differently, which would include the edibles found in defendant's car, the State should have determined the "amount of THC in the product," not relied on the "outdated rule of total weight" for all the seized cannabis. As such, defendant contends that "without evidence that the cannabis-infused product exceeded THC legal possession limits or was unauthorized, it cannot be included in the total amount seized from [defendant's] vehicle." As such, defendant contends that the State failed to meet the 100-gram threshold amount necessary to convict him of armed violence. We find defendant's argument misplaced.

¶ 29 We first note that since January 1, 2020, the use and possession of cannabis has been legally permitted, with specific restrictions. *People v. Woolfolk*, 2025 IL App (5th) 230523, ¶ 52 (citing

People v. Redmond, 2024 IL 129201, ¶ 66). Specifically, the Cannabis Regulation and Tax Act allows individuals, 21 years of age or older, to lawfully possess certain amounts of cannabis, including up to "30 grams of cannabis flower; *** no more than 500 milligrams of THC contained in cannabis-infused product; [and] *** 5 grams of cannabis concentrate." 410 ILCS 705/10-5(a)(1), 10-10(a)(1)-(3) (West 2020). "Regardless of recent changes in the law legalizing possession of small amounts of cannabis, there are still, among other things, (1) illegal ways to transport it, (2) illegal places to consume it, and (3) illegal amounts of it to possess." *People v. Molina*, 2022 IL App (4th) 220152, ¶ 43. We first focus our review on the possession of cannabis.

¶ 30 Importantly, here, the State charged defendant by information with armed violence, alleging that, while armed with a dangerous weapon, he knowingly and unlawfully possessed "more than 100 grams but not more than 500 grams of any substance containing cannabis," pursuant to the Cannabis Control Act. 720 ILCS 550/4(d) (West 2020). A review of the Cannabis Control Act demonstrates that no burden exists on the State to determine the total weight of the substance or substances based on the form of cannabis (*i.e.*, plant material, a cannabis-infused product, or THC concentrate). See *id.* Rather, the Cannabis Control Act explicitly states that a defendant illegally possesses cannabis when he is in possession of more than 100 grams but less than 500 grams "of any substance containing cannabis." *Id.* As the State correctly points out, neither the Cannabis Control Act nor the Cannabis Regulation and Tax Act allow for any subtractions of legally authorized amounts—either total weight or THC amount—when determining whether a defendant has violated section 4(d) of the Cannabis Control Act. *Id.*; see also 410 ILCS 705/10-10 (West 2020). As such, our reading of the Cannabis Control Act demonstrates that the determinative factor of seized cannabis is whether the total weight of the seized cannabis exceeded 100 grams, and, contrary to defendant's position, does not require

differences in weighing the content based on the form of the cannabis seized by police. Accordingly, we cannot conclude that the State failed to prove defendant guilty beyond a reasonable doubt of armed violence.

¶ 31 Moreover, we recognize that the legal landscape has changed regarding the possession of cannabis, and that defendant argues this court should only address the weight of the THC in the cannabis possessed by defendant. In response, this court finds it important to address the transportation of cannabis as it pertains to the whereabouts of the three containers seized by police. The Illinois Vehicle Code prohibits drivers and passengers from possessing cannabis within any area of any motor vehicle upon a highway in Illinois "except in a secured, sealed or resealable, odor-proof, child-resistant cannabis container that is inaccessible." 625 ILCS 5/11-502.15(b), (c) (West 2022). The Cannabis Regulation and Tax Act "does not permit any person to engage in, and does not prevent the imposition of any civil, criminal, or other penalties for engaging in, *** possessing cannabis *** in a vehicle not open to the public unless the cannabis is in a reasonably secured, sealed or resealable container *and* reasonably inaccessible while the vehicle is moving." (Emphasis added.) 410 ILCS 705/10-35(a)(2)(D) (West 2022).

¶ 32 Although no evidence indicated that the containers were unsealed, the containers were reasonably accessible to defendant in the center console while the vehicle was in motion. As such, consistent with our recent decision in *Woolfolk*, 2025 IL App (5th) 230523, ¶¶ 56-57, where this court determined that probable cause existed to search the vehicle, provided officers smelled an odor of cannabis and observed a "broken seal" on a cannabis container located in the console of the vehicle; here, the containers were not stored properly because they were not reasonably inaccessible while defendant drove the vehicle. 410 ILCS 705/10-35(a)(2)(D) (West 2022). Thus,

although possession of cannabis has been legally permitted, here, the evidence demonstrated that defendant did not legally transport the containers.

¶ 33 Alternatively, defendant argues for the first time that the armed violence and AUUW statutes violate his second amendment right to carry a firearm outside the home for self-defense both facially and as applied to him. Specific to the armed violence statute, defendant argues that the statute runs afoul to his second amendment right because it does not require the State prove he possessed the dangerous weapon without lawful authority. Specific to the AUUW statute, defendant essentially argues that his conviction was based on his noncompliance with the FOID Card Act (430 ILCS 65/1 *et seq.* (West 2020)) and the Firearm Concealed Carry Act (430 ILCS 66/1 *et seq.* (West 2020)), which violates his second amendment right. We disagree.

¶ 34 "[S]tatutes are presumed constitutional, and we have the duty to construe statutes so as to uphold their constitutionality if there is any reasonable way to do so." *People v. Johnson*, 2015 IL App (1st) 133663, ¶ 25 (citing *People v. Inghram*, 118 Ill. 2d 140, 146 (1987)). "The party challenging the validity of a statute has the burden of clearly establishing a constitutional violation." *Id.* (citing *In re R.C.*, 195 Ill. 2d 291, 296 (2001)). "Whether a statute is unconstitutional is a question of law, which is reviewed *de novo*." *People v. Davis*, 2014 IL 115595, ¶ 26.

¶ 35 "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), *appeal pending* (Sept. Term 2024). "A facial challenge requires the challenging party to show that the statute is unconstitutional under any set of facts, while an as-applied challenge depends on the particular facts and circumstances of the party." *Id.* (citing *Rizzo*, 2016 IL 118599, ¶ 24). "Successfully making a facial challenge to a statute's constitutionality is extremely difficult, requiring a showing that the statute would be invalid under *any* imaginable set of circumstances. The invalidity of the

statute in one particular set of circumstances is insufficient to prove its facial invalidity." (Emphasis in original.) *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006) (citing *In re Parentage of John M.*, 212 Ill. 2d 253, 269 (2004)). " '[S]o long as there exists a situation in which a statute could be validly applied, a facial challenge must fail.' " *People v. Huddleston*, 212 Ill. 2d 107, 145 (2004) (quoting *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002)).

¶ 36 As stated in detail above, defendant, here, was charged with armed violence, which provides: "A person commits armed violence when, while armed with a dangerous weapon, he commits any felony defined by Illinois Law ***." 720 ILCS 5/33A-2(a) (West 2022). In addition, defendant was charged with AUUW, which provides: "A person commits the offense of aggravated unlawful use of a weapon when he *** knowingly" carries a firearm on or about his person or in any vehicle and the person possessing the firearm has not been issued a currently valid FOID card. *Id.* § 24-1.6(a) . With this in mind, we consider defendant's arguments that the armed violence and AUUW statutes violate his second amendment right both facially and as applied to him.

¶ 37 The second amendment to the U.S. Constitution provides as follows: "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 *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 8-9 (2022), 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)). In *Bruen*, the Supreme

Court set out the following two-part test for determining whether laws regulating conduct protected by the second amendment were valid under the constitution:

> "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.

Illinois courts have concluded that "the two-part process requires us to determine (1) whether 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. Travis*, 2024 IL App (3d) 230113, ¶ 24.

¶ 38 In *United States v. Rahimi*, 602 U.S. 680 (2024), the Supreme Court considered the analytical framework for second amendment claims following its decision in *Bruen*. In applying that analytical framework, the Supreme Court upheld a firearm restriction against an individual with a domestic violence restraining order. *Id.* at 699-700. The individual subject to the restraining order was found to pose " 'a credible threat to the physical safety' " of his girlfriend and child. *Id.* at 688-89. The Supreme Court conducted a historical analysis to assess whether the firearm restriction was permissible. *Id.* at 693-700. The Supreme Court ultimately found the restriction constitutional but rejected the government's argument that the individual was not protected under the second amendment because he was not " 'responsible,' " holding that "[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment." *Id.* at 701-02.

¶ 39 This court recently applied *Bruen* in considering a defendant's facial second amendment challenge to the unlawful use of a weapon by a felon (UUWF) statute (720 ILCS 5/24-1.1(a) (West 2022)). *People v. Stephens*, 2024 IL App (5th) 220828. In addressing the State's arguments that the defendant was not covered by the plain text of the second amendment and that convicted felons fell outside the coverage of the second amendment because they were not law-abiding, responsible persons (*id.* ¶ 33), this court acknowledged that several other districts of the appellate court determined that "the protections afforded by the second amendment apply only to law-abiding citizens." *Id.* ¶ 28 (citing *People v. Kelley*, 2024 IL App (1st) 230569, ¶ 22; *People v. Mobley*, 2023 IL App (1st) 221264, ¶¶ 27-28 ("*Bruen* strongly suggests the test only applies when a regulation impacts a law-abiding citizen's ability to keep and bear arms"); *People v. Baker*, 2023 IL App (1st) 220328, ¶ 37 (noting that the *Bruen* majority and concurrences repeated the phrase "law-abiding" 18 times); *People v. Burns*, 2015 IL 117387, ¶ 41 (Garman, C.J., specially concurring, joined by Thomas, J.) ("the right secured by the second amendment is held by 'law-abiding, responsible citizens' and is not unlimited" (quoting *Heller*, 554 U.S. at 635))). This court noted, however, that a different panel from the First District held that felons were not excluded by the plain language of the second amendment under the first prong of *Bruen* and that a defendant's felony conviction should be evaluated under the historical tradition analysis set out in the second prong of *Bruen*. *Id.* ¶ 29 (citing *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 89, *pet. for leave to appeal pending*, No. 130153 (filed Oct. 30, 2023); *Travis*, 2024 IL App (3d) 230113, ¶ 26).

¶ 40 This court further noted that federal courts were split on "whether the phrase 'the people' as used in the second amendment categorically exclude[d] felons." *Id.* ¶ 30 (citing *United States v. Head*, 734 F. Supp. 3d 806, 814-15 (N.D. Ill. 2024)). This court recognized that some federal courts assumed, without deciding, that felons were among "the people" and proceeded to the

second prong of the *Bruen* analysis (*United States v. Stringer*, 742 F. Supp. 3d 840, 852-53 (C.D. Ill. 2024); *United States v. Wigfall*, 677 F. Supp. 3d 791, 796 (N.D. Ind. 2023)), while other federal courts found that felons were not protected under the plain text of the second amendment (*Stephens*, 2024 IL App (5th) 220828, ¶ 30 (citing *United States v. McKay*, No. 23 CR 443, 2024 WL 1767605, at *2 (N.D. Ill. Apr. 24, 2024), and *United States v. Hall*, No. 22 CR 665, 2023 WL 8004291, at *2 (N.D. Ill. Nov. 17, 2023))). This court noted that other federal courts determined that felons were protected under the plain text of the second amendment. *Id.* (citing *United States v. Ware*, 673 F. Supp. 3d 947, 956 (S.D. Ill. 2023), and *United States v. Agee*, No. 1:21-CR-00350-1, 2023 WL 6443924, at *4 (N.D. Ill. Oct. 3, 2023)).

¶ 41 This court followed the reasoning of the federal court's decision in *Ware* and concluded that the defendant, despite his status as a felon, fell "into the category of 'the people' protected by the second amendment." *Id.* ¶ 33. However, this court noted that "the defendant's status as a felon [was not] irrelevant; rather, it [was] more properly evaluated under the second prong of the *Bruen* analysis." *Id.* ¶ 34. This court ultimately concluded "that section 24-1.1(a) [was] consistent with this nation's historical tradition of firearm regulation" and held that the statute was constitutional on its face under the second amendment. *Id.* ¶ 39.

¶ 42 We respectfully disagree with the portion of *Stephens* holding that felons fall "into the category of 'the people' protected by the second amendment." *Id.* ¶ 33. Instead, we follow our recent decision in *People v. Smith*, 2025 IL App (5th) 230656, ¶ 25, where the defendant argued that the armed violence statute violated his second amendment right to carry a handgun for self-defense, both facially and as applied to him. *Id.* ¶ 21. In *Smith*, evidence demonstrated that police stopped a reportedly stolen vehicle. *Id.* ¶ 4. The driver and front passenger fled after the stop, leaving two backseat passengers in the vehicle, which included the defendant and another

individual. *Id.* Following a search of the vehicle, police recovered a loaded 9-millimeter Taurus handgun and 0.3 grams of suspected cocaine on the defendant's person. *Id.* The defendant denied that he sold drugs, stating that he was a " 'user,' " thus, the cocaine on his person was for personal use. *Id.* ¶ 5. The defendant also told police that he found the loaded 9-millimeter Taurus handgun two days before his arrest and decided to keep it. *Id.* The State subsequently charged the defendant with armed violence with the predicate felony being possession of a controlled substance. *Id.* ¶ 14.

¶ 43 In departing from the reasoning of *Stephens* and finding that the defendant did not fall into the category of " 'the people' " protected by the second amendment, this court acknowledged that the defendant was not considered a "felon" at the time he was charged. *Id.* ¶ 25. However, this court concluded that the federal court decisions holding that a felon is not a law-abiding citizen protected under the second amendment "extend[ed] to a defendant who is in the process of committing a felony while simultaneously possessing an operational firearm." *Id.* Here, similar to *Smith*, defendant's armed violence charge stemmed from his commission of the felony of unlawful possession of cannabis while simultaneously possessing an accessible, loaded firearm in his vehicle. Thus, we cannot conclude that defendant, here, falls into the category of "the people" protected by the second amendment. Because defendant is not a law-abiding citizen who is protected under the second amendment, we need not address the second step of the analysis in *Bruen*, which considers whether the regulation is consistent with this nation's historical tradition of firearm regulation. Thus, we reject defendant's argument that the armed violence statute violates the second amendment to the U.S. Constitution on its face.

¶ 44 Next, in addressing defendant's challenge to the AUUW statute, defendant essentially argues that his conviction was based on his noncompliance with the FOID Card Act and Firearm Concealed Carry Act in violation of his second amendment right. We disagree.

¶ 45 The AUUW statute provides that:

> "(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:
>
> (1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; [and]
>
> ***
>
> (3) One of the following factors is present:
>
> ***
>
> (A-5) the pistol, revolver, or handgun possessed was uncased, loaded, and immediately accessible at the time of the offense and the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act; or
>
> * * *
>
> (C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card[.]" 720 ILCS 5/24-1.6(a)(1), (a)(3)(A-5), (a)(3)(C) (West 2022).

¶ 46 The AUUW statute, specifically subsections (a)(3)(A-5) and (a)(3)(C), "apply exclusively to non-law-abiding conduct." *People v. Hatcher*, 2024 IL App (1st) 220455, ¶ 57. Importantly, possessing a concealed firearm outside the house without a CCL violates section 10(g)(1) of the Firearm Concealed Carry Act (430 ILCS 66/10(g)(1) (West 2022)), and possessing a firearm without a FOID card violates section 2(a)(1) of the FOID Card Act (430 ILCS 65/2(a)(1) (West 2022)). As our colleagues in the First District recently highlighted, violating either the Firearm Concealed Carry Act or FOID Card Act is not " 'law-abiding' " conduct according to *Bruen*, and thus, the second amendment does not apply to that conduct. *Hatcher*, 2024 IL App (1st) 220455, ¶ 57 (citing *Baker*, 2023 IL App (1st) 220328, ¶ 37 ("*Bruen* just does not apply" to those who are not law-abiding). Here, the second amendment is not implicated where the AUUW statute criminalizes violations of civil laws as set out in the Firearm Concealed Carry Act or FOID Card Act. See *id.* Because defendant is not a law-abiding citizen who is protected under the second

amendment, we need not address the second step of the analysis in *Bruen*, which considers whether the regulation is consistent with this nation's historical tradition of firearm regulation. Accordingly, for the reasons discussed, we reject defendant's argument that the AUUW statute violates the second amendment to the U.S. Constitution on its face.

¶ 47 We next consider defendant's argument that the armed violence and AUUW statutes are unconstitutional as applied to him. Defendant maintains that there is no historical analogue to armed violence predicated on the possession of a small amount of cannabis for personal use, and that there is no historical tradition of prohibiting a non-criminal like defendant, who carried a firearm for self-defense purposes, from possessing a firearm without a CCL or FOID card.

¶ 48 "An as-applied challenge depends on the particular facts and circumstances of the party." *Burns*, 2024 IL App (4th) 230428, ¶ 11 (citing *Rizzo*, 2016 IL 118599, ¶ 24). "Because as-applied constitutional challenges are, by definition, dependent on the specific facts and circumstances of the person raising the challenge, it is paramount that the record be sufficiently developed in terms of those facts and circumstances for purposes of appellate review." *Id.* ¶ 17 (citing *People v. Harris*, 2018 IL 121932, ¶ 39). Our supreme court has stated that

> " ' "[a] court is not capable of making an 'as applied' determination of unconstitutionality when there has been no evidentiary hearing and no findings of fact. [Citation.] Without an evidentiary record, any finding that a statute is unconstitutional 'as applied' is premature." ' " *Rizzo*, 2016 IL 118599, ¶ 26 (quoting *People v. Mosley*, 2015 IL 115872, ¶ 47, quoting *John M.*, 212 Ill. 2d at 268).

However, our supreme court has also stated that when "[a]ll of the facts and circumstances to decide the defendant's claim *** are already in the record," the as-applied constitutional claim may be considered on appeal for the first time even without a prior evidentiary hearing. *People v.*

Holman, 2017 IL 120655, ¶¶ 29-32, *overruled on other grounds by People v. Wilson*, 2023 IL 127666, ¶ 42.

¶ 49 We note that, here, defendant did not raise his as-applied challenges before the trial court. Accordingly, there was no evidentiary hearing on these specific issues. However, the evidence presented at the trial and sentencing hearing is sufficient for this court to review defendant's claims, given that the record includes facts surrounding the predicate felony offense and defendant's possession of a weapon. Thus, we consider defendant's claims.

¶ 50 In *Brooks*, 2023 IL App (1st) 200435, our colleagues in the First District followed *Bruen* when considering whether the armed habitual criminal statute was unconstitutional as applied to a defendant with nonviolent predicate offenses. The predicate offenses for the armed habitual criminal charge in *Brooks* were manufacture or delivery of " 'other amount of narcotics Schedule I and II' " and unlawful possession of a weapon by a felon. *Id.* ¶ 3. In applying the first step of the *Bruen* analysis, the First District concluded that the plain language of the second amendment covered the defendant's conduct of possessing a firearm. *Id.* ¶ 89.

¶ 51 Unlike *Brooks* and similar to *Smith*, here, we conclude that defendant's conduct of possessing cannabis while simultaneously possessing an operational and accessible firearm without a valid FOID card and CCL was not conduct protected under the second amendment. Again, although defendant was not a felon at the time he committed the offenses at issue, his conduct violated both the Firearm Concealed Carry and FOID Card Acts, and thus is not " 'law-abiding' " conduct according to *Bruen*. *Hatcher*, 2024 IL App (1st) 220455, ¶ 57 (citing *Baker*, 2023 IL App (1st) 220328, ¶ 37 ("*Bruen* just does not apply" to those who are not law-abiding)). Thus, defendant's as-applied challenge to both the armed violence and AUUW statute fails under the first step of *Bruen* as well. See *Baker*, 2023 IL App (1st) 220328, ¶ 37 (concluding that the

defendant could not invoke *Bruen* because the test only applies to "laws that attempt[ ] to regulate the gun possession of 'law-abiding citizens' "). Because we do not find the specific facts of defendant's convictions establish that the armed violence and AUUW statutes are unconstitutional as applied to defendant, defendant's conduct was not protected under the second amendment. Accordingly, defendant's challenges fail both facially and as applied to him.

¶ 52 III. Conclusion

¶ 53 For the foregoing reasons, we affirm defendant's convictions and sentence.

¶ 54 Affirmed.