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) 250644-U

NO. 4-25-0644

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 16, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Winnebago County
DARRYL D. GULLENS,	)	No. 05CF488
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Paccagnini,
	)	Judge Presiding.

JUSTICE GRISCHOW delivered the judgment of the court.
Justices Lannerd and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding (1) the unlawful possession of a weapon by a felon statute (720 ILCS 5/24-1.1(a) (West 2004)) 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 is premature.

¶ 2 Defendant, Darryl D. Gullens, was convicted in 2006 based upon a negotiated guilty plea to one count of second degree murder (720 ILCS 5/9-2(a)(2) (West 2004)) and one count of unlawful use or possession of a weapon by a felon (UPWF) (*id.* § 24-1.1(a)). In 2025, he filed a motion to vacate his UPWF conviction, citing *People v. Aguilar*, 2013 IL 112116. The trial court denied the motion, concluding *Aguilar* did not apply, and defendant appealed. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In 2005, defendant and two others were charged with two counts of first degree

murder (720 ILCS 5/9-1(a)(3) (West 2004)) after two men were shot during an illegal drug transaction. On January 4, 2006, pursuant to a plea agreement with defendant, the State filed a new information, charging defendant with second degree murder (*id.* § 9-2(a)(2)) and UPWF (*id.* § 24-1.1(a)). The State alleged defendant knowingly shot and killed two men with a handgun, believing he was justified at the time, but his belief was unreasonable. The State further alleged defendant committed the offense of UPWF when he knowingly possessed a firearm despite being previously convicted of the felony offense of theft (over $300) (*id.* § 16-1(a), (b)(4)).

¶ 5 The State offered the following factual basis in support of defendant's guilty plea. On February 7, 2005, defendant and two codefendants were driving in areas around Rockford, Illinois. They met up with Terrance Connor, who sought to sell them some crack cocaine. After defendant and his codefendants agreed to the sale, and showed they had cash for the purchase, Connor went into an apartment to retrieve the cocaine. While inside, Connor, along with Joshua Adams and a third person, determined they were going to rob defendant and his codefendants rather than sell them the cocaine. Adams approached defendant's vehicle with an air rifle and pointed it at defendant's face. Defendant responded by taking out his handgun and shooting Adams and Connor.

¶ 6 Pursuant to a fully negotiated plea, defendant pled guilty to the two charges in the new information. The parties waived presentence investigation, and the matter proceeded directly to sentencing. Defendant was sentenced to 20 years' imprisonment and 2 years of mandatory supervised release (MSR) on the second degree murder conviction, to be served consecutively with a 5-year prison sentence on the UPWF conviction, with 1 year of MSR.

¶ 7 Defendant did not file a direct appeal. In 2012, defendant filed a petition for postconviction relief, arguing the trial court failed to properly admonish him regarding his term

of MSR and the mittimus failed to reflect the correct sentencing credits. The petition was dismissed as frivolous and patently without merit. The appellate court affirmed in a summary order. *People v. Gullens*, No. 2-12-0368 (2013) (unpublished summary order under Illinois Supreme Court Rule 23(c)).

¶ 8 While the petition for postconviction relief was pending on appeal, defendant filed a petition for relief from judgment pursuant to section 2-1401(f) of the Code of Civil Procedure (735 ILCS 5/2-1401(f) (West 2012)). Defendant alleged the imposition of consecutive sentences denied him due process. The trial court dismissed the petition.

¶ 9 In 2025, defendant filed the motion at issue in this appeal. In his motion to vacate his UPWF conviction, defendant alleged his conviction was void because it was based upon a facially unconstitutional statute. In his motion, defendant cited the Illinois Supreme Court's decisions of *Aguilar*, 2013 IL 112116, ¶ 21, holding the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) of the Criminal Code of 2012 (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) of the aggravated unlawful possession of a weapon (AUUW) statute was facially unconstitutional in violation of the second amendment (U.S. Const., amend. II), and *People v. Burns*, 2015 IL 117387, ¶ 20, clarifying *Aguilar* to remove the reference to the Class 4 form.

¶ 10 The trial court denied the motion to vacate, finding *Aguilar* was not applicable because defendant had been convicted of UPWF, not AUUW.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant contends his conviction of UPWF is void as violative of the second amendment (U.S. Const., amend. II), both facially and as applied to him, under *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

¶ 14 "Statutes are presumed constitutional, and to rebut that presumption, the party challenging a statute's constitutionality has the burden of establishing a clear violation." *People v. Bochenek*, 2021 IL 125889, ¶ 10. "Courts have a duty to uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of the statute's validity." *People v. Rizzo*, 2016 IL 118599, ¶ 23. The constitutionality of a statute presents a question of law that we review *de novo*. *People v. Burns*, 2024 IL App (4th) 230428, ¶ 10.

¶ 15 Constitutional challenges to a statute may be either facial or as applied. *Id.* ¶ 11. Facial and as-applied challenges are not interchangeable, however. *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.

¶ 16 A. Facial Challenge

¶ 17 When making a facial challenge to a statute, the challenger bears a heavy burden because such a challenge will fail if there is any situation wherein the statute could be validly applied. *Rizzo*, 2016 IL 118599, ¶ 24. " 'The fact that the statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid.' " *Id.* (quoting *Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, ¶ 33).

¶ 18 The second amendment, made applicable to the states through the fourteenth amendment (U.S. Const., amend. IV), 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; see *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010) (holding the fourteenth amendment incorporates the second amendment, rendering the second amendment applicable to the states). "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*, 561 U.S. at 791).

¶ 19 In this case, defendant was convicted of UPWF, which, as charged, provided:

> "It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any weapon prohibited under Section 24-1 of this Act or any firearm or any firearm ammunition if the person has been convicted of a felony under the laws of this State or any other jurisdiction. This Section shall not apply if the person has been granted relief by the Director of the Department of State Police under Section 10 of the Firearm Owners Identification Card Act." 720 ILCS 5/24-1.1(a) (West 2004).

The predicate felony underlying defendant's UPWF conviction was theft of property exceeding $300 (*id.* § 16-1(a), (b)(4)).

¶ 20 In *Bruen*, 597 U.S. at 17, the Supreme Court identified a two-part inquiry for assessing the constitutional validity of laws seeking to regulate conduct protected by the second amendment. First, a court must determine if the second amendment's plain text covers an individual's conduct, in which case the conduct is presumptively protected. *Bruen*, *Id*. To justify regulation of that protected conduct, "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.*

¶ 21 Defendant contends his right to possess a firearm was presumptively protected pursuant to the plain text of the second amendment, despite his status as a felon. This court, however, has repeatedly rejected this contention, concluding a felony conviction makes an

individual not a law-abiding citizen and, therefore, not included in "the people" protected by the second amendment. See *Burns*, 2024 IL App (4th) 230428, ¶ 21 (holding the defendant, as a felon, could not show his conduct was presumptively protected by the second amendment because he was, by definition, not a law-abiding citizen, so he could not show the UPWF statute facially violated the second amendment under the *Bruen* framework); see also *People v. Huff*, 2025 IL App (4th) 240762, ¶ 16 (relying on *Burns* and rejecting the defendant's facial challenge to the constitutionality of the UPWF statute); *People v. Hudgens*, 2026 IL App (4th) 250155-U, ¶ 52 (same); *People v. Bruce*, 2025 IL App (4th) 240706-U, ¶ 23 (same); *People v. Gardner*, 2024 IL App (4th) 230443, ¶ 68 (same); accord *People v. Benson*, 2024 IL App (1st) 221230-U, ¶ 52, *vacated in part on other grounds*, 2026 IL 131191 (rejecting the defendant's facial challenge to the constitutionality of the UPWF statute on the basis that a felon was not a law-abiding citizen under *Bruen*); *People v. Tapia*, 2026 IL App (2d) 240721-U, ¶ 49 (same); *People v. Finley*, 2026 IL App (5th) 240775-U, ¶ 58 (same).

¶ 22 Defendant argues we should not follow *Burns*, citing primarily *United States v. Rahimi*, 602 U.S. 680 (2024). However, we have already considered *Rahimi*'s effect on a facial challenge to the UPWF statute and found *Rahimi* to be inapplicable. *Huff*, 2025 IL App (4th) 240762, ¶ 17 ("Defendant's reliance on *Rahimi* is misplaced, and there is nothing in *Rahimi* that requires this court to reconsider its decision in *Burns*."). We continue to adhere to our decision in *Burns* and hold *Bruen* does not apply to defendant, who, as a felon, is not a law-abiding citizen and is not included in "the people" protected by the second amendment. *Burns*, 2024 IL App (4th) 230428, ¶ 21. As defendant cannot show his conduct was presumptively protected by the second amendment, he cannot show the UPWF statute is facially unconstitutional.

¶ 23 B. As-Applied Challenge

¶ 24 Although defendant's motion to vacate his UPWF conviction did not raise an as-applied challenge, defendant argues in this court that the UPWF statute is unconstitutional as applied to him. He acknowledges there was no evidentiary hearing in the trial court but argues this court can reach the issue because all the relevant facts are contained within the record.

¶ 25 An as-applied challenge requires an examination of the particular facts and circumstances of the defendant before the court. *People v. Benson*, 2026 IL 131191, ¶ 18. "We exclusively examine the facts of the case before us and not any other set of hypothetical facts under which the statute might be unconstitutional." *Id.* Thus, while a facial challenge can be raised at any time, an as-applied constitutional challenge, because of its factual nature, must be raised in the trial court so there can be an evidentiary hearing and findings of fact. *Id.* ¶¶ 19-20.

¶ 26 Defendant argues the record of the present charges, along with the record indicating his UPWF conviction was based on a prior theft conviction, constituted sufficient factual detail for this court to determine the UPWF statute was unconstitutional as applied to him. We disagree.

¶ 27 Recently, in *Benson*, the Illinois Supreme Court declined to consider an as-applied constitutional challenge to the UPWF statute, finding it premature, as it was not raised in the trial court. *Id.* ¶ 44. The *Benson* court rejected the defendant's argument that an evidentiary hearing was unnecessary and the court should apply a recognized narrow exception to the requirement that a party must first raise an as-applied constitutional challenge in the trial court. *Id.* ¶¶ 21-22. In doing so, the court considered the " 'very narrow exception' " recognized in *People v. Holman*, 2017 IL 120655, ¶¶ 29-32, wherein the defendants claimed their sentences were unconstitutional based upon *Miller v. Alabama*, 567 U.S. 460 (2012). *Benson*, 2026 IL 131191, ¶ 21. It distinguished the claims in *Holman*, which required only a showing that the

juvenile defendants were sentenced to mandatory life sentences and did not require further factual development, to the claims in *Benson*, which required consideration of facts and circumstances that were not of record. *Id.* ¶¶ 21-22. We hold the reasoning of *Benson* is applicable here and similarly reject the narrow exception applied in *Holman*.

¶ 28 Defendant contends his theft conviction, which provided the basis for his instant UPWF conviction, was for a nonviolent offense, and evidence he had a "non-violent history" was contained in the record. The record, however, contains very little information for making this determination and no finding by the trial court. Defendant not only stipulated to the factual basis of the offense, including that he had a felony conviction for theft, but the parties waived a presentence investigation and proceeded to sentencing. Accordingly, any finding that the UPWF statute is unconstitutional as applied to defendant would be premature.

¶ 29 III. CONCLUSION

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

¶ 31 Affirmed.