

2026 IL App (1st) 241886-U

No. 1-24-1886

Order filed October 23, 2026

Third Division

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 16 CR 15485
	)	
MARCARIOUS CLARK,	)	Honorable
	)	Neera L. Walsh,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Quish and Justice Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's facial constitutional challenges to his convictions for aggravated unlawful use of a weapon and armed habitual criminal fail.
- ¶ 2 Defendant Marcarious Clark appeals from the denial of his petition for relief from judgment filed pursuant to section 2-1401 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1401 (West 2024)). On appeal, he argues that the provisions of the aggravated unlawful use of a weapon (AUUW) statute and armed habitual criminal (AHC) statute under which he was convicted

are facially unconstitutional under the second amendment of the United States Constitution and the United States Supreme Court’s decision in *New York State Rifle and Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022). We affirm.¹

¶ 3 On June 27, 2018, in case number 16 CR 15485, defendant pled guilty to AUUW predicated on him possessing a firearm without a valid Firearm Owner’s Identification (FOID) card and a concealed carry license (CCL) and was sentenced to one year imprisonment. See 720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C) (West 2018). On October 13, 2021, in case number 19 CR 08215, defendant also pled guilty to AUUW and was sentenced to two years’ imprisonment. The indictment, sentencing order, or transcript from the October 13, 2021, plea hearing are not included in the record on appeal, and the record does not otherwise specify the subsection of the AUUW statute under which defendant was convicted in that case. On May 31, 2023, in case number 22 CR 07854, defendant pled guilty to AHC (720 ILCS 5/24-1.7(a) (West 2022)) and was sentenced to six years’ imprisonment.

¶ 4 On July 15, 2024, defendant filed a section 2-1401 petition alleging that his AUUW and AHC convictions in all three cases were void pursuant to *People v. Aguilar*, 2013 IL 112116, *People v. Burns*, 2015 IL 117387, *People v. Mosley*, 2015 IL 115872, and the second amendment.

¶ 5 On August 29, 2024, the circuit court denied relief. The judge, who presided over the plea hearing in case number 16 CR 15485 but not in case numbers 19 CR 08215 or 22 CR 07854, first noted that she “did not enter a final judgment in case number 19CR08215 or 22CR07854 and [could not] address [defendant’s] challenges to the convictions entered in those cases.” Further,

¹In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

she found that the relevant AUUW provision in case number 16 CR 15485 was not at issue in *Aguilar*, *Burns*, or *Mosley*. The judge also found that courts have consistently held that restrictions on firearms possession by those without a FOID card or CCL comport with the second amendment.

¶ 6 On appeal, defendant argues that the provisions of the AUUW statute and AHC statute under which he was convicted are facially unconstitutional under the second amendment and *Bruen*.

¶ 7 To start, we address three procedural issues raised by the State. The State first contends that this court lacks jurisdiction over defendant's cases in 19 CR 08215 and 22 CR 07854. Although defendant's section 2-1401 petition requested relief in cases numbers 16 CR 15485, 19 CR 08215, and 22 CR 07854, his notice of appeal only listed case number 16 CR 15485. A notice of appeal "confers jurisdiction on a court of review to consider only the judgments or parts thereof specified in the notice of appeal." *People v. Smith*, 228 Ill. 2d 95, 104 (2008). That said, a notice of appeal is construed liberally. *Id.* The body of the notice of appeal states that defendant appeals the denial of his section 2-1401 petition because he was "entitled to relief sought, regarding prior void *convictions*." (Emphasis added.) Therefore, from the notice of appeal, it is clear that defendant intended to appeal from the judgments entered in all three cases, and we will consider all three.

¶ 8 The State next argues that defendant's challenges are forfeited because he failed to raise the facial *Bruen* challenges in the circuit court.

¶ 9 Ordinarily, a defendant "who fails to raise an issue before the trial court forfeits the issue" on appeal. *People v. Rodriguez*, 2021 IL App (1st) 200173, ¶ 58. However, "[w]hen a statute is declared facially unconstitutional and void *ab initio*, it means that the statute was constitutionally

infirm from the moment of its enactment and, therefore, unenforceable.” *People v. Thompson*, 2015 IL 118151, ¶ 32. Moreover, “a judgment based on a statute that is facially unconstitutional is void,” and challenges based on a void statute are “not subject to forfeiture” or “any other ordinary procedural bar.” *In re N.G.*, 2018 IL 121939, ¶¶ 43, 57.

¶ 10 This is so even when a defendant raises a facial challenge for the first time on appeal from the denial of a section 2-1401 petition that raised different claims, as defendant did here. See *People v. Doebling*, 2024 IL App (1st) 230384, ¶ 14 (defendant allowed to raise facial *Bruen* challenge for the first time on appeal after failing to raise it in a section 2-1401 petition from which he appealed); see also *People v. McTizic*, 2025 IL App (1st) 240467-U, ¶ 5 (same). Therefore, defendant may raise the facial *Bruen* challenges for the first time on appeal.

¶ 11 Lastly, the State argues that, in challenging his “AUUW convictions,” defendant attempts to challenge the constitutionality of the FOID Card Act and Firearm Concealed Carry Act but lacks standing to do so.² See *Aguilar*, 2013 IL 112116, ¶ 12 (“[o]ne has standing to challenge the validity of a statute if he has sustained or if he is in immediate danger of sustaining some direct injury as a result of enforcement of the statute”). We disagree. Defendant challenges the constitutionality of section 24-1.6(a)(1), (3)(A-5), (3)(C) of the AUUW statute, the provision to which he pled guilty in case number 16 CR 15485, not the FOID Card Act or Firearm Concealed Carry Act. As defendant argues on appeal that his conviction in that case should be vacated because that provision of the AUUW statute is facially unconstitutional, he has standing to raise the issue.

²In making this argument, the State does not distinguish between defendant’s convictions for AUUW in case numbers 16 CR 15485 and 19 CR 08215. In substance, however, the State’s argument only clearly implicates case number 16 CR 15485, where defendant was convicted of AUUW predicated on possessing a firearm without a valid FOID card or CCL. As noted, the record does not reflect the subsection of the AUUW statute under which defendant was convicted in case number 19 CR 08215.

¶ 12 Having resolved these procedural issues, we address, in turn, defendant’s appeals from the denial of relief from his convictions in case numbers 16 CR 15485, 19 CR 08215, and 22 CR 07854.

¶ 13 Regarding defendant’s appeal from his AUUW conviction in case number 19 CR 08215, for the reasons we have explained, he is not prohibited from raising his facial challenge to that conviction for the first time on appeal. Notwithstanding, deficiencies in the record preclude us from addressing the issue. Under a facial challenge, “specific facts related to the challenging party are irrelevant.” *People v. Rizzo*, 2016 IL 118599, ¶ 24. That said, the record on appeal does not reveal the complete subsection of the AUUW statute under which defendant was convicted. The record, for example, does not contain the indictment, sentencing order, or transcript from the October 13, 2021, plea hearing detailing the exact subsection of the AUUW statute that defendant violated. Defendant, as appellant, bears the burden of presenting a “sufficiently complete record of the proceedings.” *Foutch v. O’Bryant*, 99 Ill. 2d 389, 391 (1984). As we are unable to determine the subsection underlying defendant’s conviction in case number 19 CR 08215, we cannot address the merits of defendant’s challenge as to that conviction.

¶ 14 Turning to defendant’s challenge to his AUUW conviction in case number 16 CR 15485, we first analyze whether section 24-1.6(a)(1), (3)(A-5), (3)(C) of the AUUW statute is facially unconstitutional under the second amendment.

¶ 15 A presumption exists that all statutes are constitutional, and a defendant carries a “heavy burden” in rebutting that presumption. *Rizzo*, 2016 IL 118599, ¶ 23. To rebut the presumption, a defendant “must clearly establish that [the statute] violates the constitution.” (Internal quotation marks omitted.) *Id.* Courts have a duty to uphold the constitutionality of a statute whenever

possible, “resolving any doubts in favor of the statute’s validity.” *Id.* A facial challenge requires a showing that “the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant.” *Id.* ¶ 24. If a situation exists in which the statute can be validly applied, a facial challenge fails. *Id.* We review the constitutionality of a statute *de novo*. *Id.* ¶ 23.

¶ 16 Defendant was convicted of violating section 24-1.6(a)(1), (3)(A-5), (3)(C) of the AUUW statute, which provides that “[a] person commits the offense of aggravated unlawful use of a weapon when he or she knowingly carries on or about his or her person *** any pistol, revolver, *** or other firearm” without a “currently valid license under the Firearm Concealed Carry Act” and “a currently valid Firearm Owner’s Identification Card.” 720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C) (West 2018).

¶ 17 The FOID Card Act provides that “no person may acquire or possess any firearm *** within this State without *** a [FOID] card previously issued *** by the Illinois State Police.” 430 ILCS 65/2(a)(1) (West 2018). The FOID card application must include evidence that an applicant, among other things, (1) is an Illinois resident; (2) is at least 21 years of age; (3) has not been convicted of a felony; (4) has not been a patient in a mental health facility in the five years preceding the application or suffers from an intellectual disability; (5) is not subject to an order prohibiting the possession of a firearm; and (6) has not been convicted of battery, assault, aggravated assault, or other similar offense where a firearm was used or convicted of domestic battery, aggravated domestic battery, or a similar offense. *Id.* § 65/4(a)(2).

¶ 18 The Firearm Concealed Carry Act mandates that an individual shall be issued a CCL if (1) he completes an application and provides the information and documents required; (2) is at least 21 years old; (3) has been issued a currently valid FOID card; (4) has not been convicted of

an offense involving the threat of force or violence or alcohol or drugs within five years of the application; (5) is not the subject of a pending warrant or prosecution; (6) has not been subject to court-ordered alcohol or drug treatment; (7) has completed firearms training and education; (8) paid the fees; and (9) does not pose a danger to himself or others. 430 ILCS 66/10(a), 25, 30 (West 2018). An individual must possess the CCL “at all times the licensee carries a concealed firearm,” absent certain exceptions. *Id.* § 66/10(g).

¶ 19 The second amendment to the United States Constitution provides that “[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. This amendment protects an individual’s right to keep and bear arms for self-defense and was made applicable to the states via the Fourteenth Amendment. *Bruen*, 597 U.S. at 17; *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). Like most rights, “the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

¶ 20 In *Bruen*, the United States Supreme Court assessed the constitutionality of a New York law mandating that individuals prove “proper cause exists” for obtaining a license to carry a firearm outside the home. *Bruen*, 597 U.S. at 12. The Supreme Court articulated a two-part test for assessing the constitutionality of firearms regulations, where a court must first analyze whether “the Second Amendment’s plain text covers an individual’s conduct.” *Id.* at 24. If so, that conduct is presumptively protected. *Id.* The government must then “justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation.” *Id.*

¶ 21 Here, defendant argues that the right to publicly carry a firearm is covered under the plain text of the second amendment and, moreover, the provision of the AUUW statute under which he

was convicted contradicts the historical tradition of firearms regulation. Defendant posits numerous reasons why the provision is facially unconstitutional, including (1) the onerous burden where an individual must first be issued a FOID card before obtaining a CCL, (2) the criminalization of the possession of a firearm without a license, and (3) the 30-day potential delay for the issuance of a FOID card and the 90-day potential delay for the issuance of a CCL from the dates of application.

¶ 22 While defendant's conduct of publicly carrying a firearm falls within the scope of the second amendment protections (*id.* at 32; see also *Aguilar*, 2013 IL 112116, ¶ 20), his facial challenge to the AUUW statute still fails.

¶ 23 To start, *Bruen* acknowledged that “throughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the intent for which one could carry arms.” *Id.* at 38. *Bruen* also distinguished between shall-issue licensing regimes, like in Illinois, and may-issue licensing regimes, like in New York. *Id.* at 13-14. Shall-issue licensing regimes require that authorities must issue concealed-carry licenses where “applicants satisfy certain threshold requirements, without granting licensing officials discretion to deny licenses based on a perceived lack of need or suitability.” *Id.* at 13. In contrast, may-issue licensing regimes allow authorities the discretion to deny licenses “even when the applicant satisfies the statutory criteria, usually because the applicant has not demonstrated cause or suitability.” *Id.* at 14-15. *Bruen* noted that “nothing in our analysis should be interpreted to suggest the unconstitutionality of the 43 States’ ‘shall-issue’ licensing regimes, under which a general desire for self-defense is sufficient to obtain a [permit]” as those regimes “do not necessarily

prevent ‘law-abiding, responsible citizens’ from exercising their Second Amendment right to public carry.” (Internal quotation marks omitted.) *Id.* at 38 n.9.

¶ 24 Furthermore, the appellate court and, most recently, our supreme court have considered and rejected similar challenges to the AUUW statute. In *People v. Thompson*, 2025 IL 129965, ¶¶ 44, 53, our supreme court held that “the United States Supreme Court’s express endorsement of shall-issue licensure obviates the need for this court to apply the historical-tradition component of the *Bruen* analysis to defendant’s facial challenge to section 24-1.6(a)(1), (a)(3)(A-5) and its enforcement of CCL and FOID card licensure” and held that section was not facially unconstitutional under the second amendment. Similarly, in *People v. Hatcher*, 2024 IL App (1st) 220455, ¶ 61, this court concluded that “subsections (a)(3)(A-5), (a)(3)(C), and (a)(3)(I) of the AUUW statute are not facially unconstitutional under *Bruen*” as “*Bruen* does not hold or even suggest that Illinois’s FOID Card or Firearm Concealed Carry Acts are unconstitutional.”

¶ 25 To the extent that defendant argues that the footnote in *Bruen* discussing the constitutionality of shall-issue licensing regimes is *dicta* and should be disregarded, we decline to do so. Our supreme court stated that *Bruen*’s footnote shall not be diminished as *dicta* because “the location, whether in the text or in a footnote, of something which the writer of an opinion thinks should be said, is a matter of style which must be left to the writer.” *Thompson*, 2025 IL 129965, ¶ 40 (quoting *Phillips v. Osborne*, 444 F.2d 778, 782 (9th Cir. 1971)). *Bruen*’s deliberate distinction between shall-issue and may-issue licensing regimes and exclusion of shall-issue licensing regimes from its decision suggests the footnote is not *dicta* and should not be disregarded in our analysis. See *People v. Thompson*, 2024 IL App (1st) 221031, ¶ 28.

¶ 26 Moreover, our interpretation of *Bruen*’s footnote comports with other decisions that have held that Illinois’s shall-issue licensing regime is not facially unconstitutional under the second amendment. See, e.g., *Thompson*, 2025 IL 129965, ¶ 39, 46 (“[t]he *Bruen* Court expressly declared shall-issue licensing regimes facially constitutional under the second amendment because they *** turn on objective criteria”); *People v. Gunn*, 2023 IL App (1st) 221032, ¶ 32 (“shall-issue regimes *** do not prevent citizens from exercising their second amendment rights”); *Hatcher*, 2024 IL App (1st) 220455, ¶ 61 (“[t]his court has held that, under *Bruen*, Illinois’s FOID Card Act and Firearm Concealed Carry Act are not facially unconstitutional”); *Thompson*, 2024 IL App (1st) 221031, ¶ 28 (“the *Bruen* Court was clear and precise in its reasoning to specifically exclude objective, shall-issue statutory licensing regimes from its decision”); *People v. Richardson*, 2024 IL App (1st) 221508-U, ¶ 16 (“[t]his court has held the AUUW statute comports with the second amendment” and “we reject *** defendant’s argument that footnote 9 in *Bruen* is mere *dicta*”); *People v. Allison*, 2024 IL App (1st) 230395-U, ¶ 11 (“*Bruen* itself essentially condoned the constitutionality of Illinois’ gun licensing regime”). As such, Illinois’s shall-issue licensing scheme and section 24-1.6(a)(1), (3)(A-5), (3)(C) of the AUUW statute are not unconstitutional, and defendant’s facial challenge pursuant to the second amendment and *Bruen* fails.

¶ 27 Next, we turn to defendant’s challenge to his conviction in case number 22 CR 07854 and analyze whether section 24-1.7(a) of the AHC statute is facially unconstitutional under the second amendment.

¶ 28 Defendant was convicted of violating section 24-1.7(a) of the AHC statute, which provides that:

“[a] person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offenses:

- (1) a forcible felony as defined in Section 2-8 of this Code,
- (2) unlawful use of a weapon by a felon; aggravated unlawful use of a weapon ***,
or
- (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher.” 720 ILCS 5/24-1.7(a) (West 2022).

¶ 29 Defendant argues that because his right to carry a firearm is covered under the plain text of the second amendment and is “presumptively protected,” the criminalization of firearm possession by felons, like defendant, is inconsistent with the Nation’s historical tradition of firearm regulation. We disagree.

¶ 30 Following *Bruen* and *Heller*, Illinois courts have held that the second amendment does not apply to a felon’s firearm possession. See, e.g., *People v. Kelley*, 2024 IL App (1st) 230569, ¶ 17 (“the Supreme Court explicitly sanctioned the prohibition on the possession of firearms by felons”); *People v. Daniels*, 2025 IL App (1st) 230823, ¶ 39 (“under the first prong of the *Bruen* test, *** the second amendment does not presumptively cover a felon’s possession of a firearm” as “felons are outside the box drawn by *Bruen*”); *People v. Gray*, 2025 IL App (1st) 191086-B, ¶ 20 (“facial challenge fails because we reject the argument that the second amendment extends protection to anyone other than ‘law-abiding citizens,’ meaning statutes that prohibit felons from possessing firearms, like AHC, generally fall outside of its scope”).

¶ 31 That said, under the second step of the *Bruen* analysis, this court has found ample historical support for the legislature’s ability to prohibit the possession of firearms by felons. *People v. Brooks*, 2023 IL App (1st) 200435, ¶¶ 90-105. This includes “widespread acceptance of the legislatures’ authority to disarm felons” during the founders’ era. *Id.* ¶ 96. *Brooks* recognized a “historical tradition of legislatures exercising their discretion to impose status-based restrictions disarming entire categories of persons who, based on their past conduct, were presumed unwilling to obey the law” and that “the founders understood that felons were one such group.” (Internal quotation marks omitted.) *Id.* ¶ 97. Thus, defendant’s facial challenge to section 24-1.7(a) the AHC statute pursuant to the second amendment and *Bruen* fails.

¶ 32 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 33 Affirmed.