

firearm without a valid firearm owner's identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)). On appeal, Webster contends: (1) the State failed to prove constructive possession of the firearm beyond a reasonable doubt; and (2) the AUUW statutes under which he was prosecuted are unconstitutional. For the following reasons, we affirm Webster's conviction.

¶ 3 BACKGROUND

¶ 4 Webster's conviction arises from a traffic stop in which Chicago Police officers recovered a handgun from an automobile in which Webster was seated. The State charged Webster with nine counts of AUUW.¹ A trial commenced on November 16, 2012, where Officer Chatys² testified to the following facts.

¶ 5 On June 6, 2012, Officer Chatys and his partner were on patrol travelling eastbound in a police vehicle on 64th Street in Chicago. While on patrol, Officer Chatys noticed an occupied automobile with a cracked windshield facing west while parked on 64th Street. Officer Chatys ran the license plates, performed a U-turn, and "curbed" the vehicle. He and his partner then exited their squad car and approached the vehicle, which carried six occupants. Webster was seated in the rear seat behind the driver. From approximately seven to ten feet away, Officer Chatys observed Webster lean forward "almost to the point [where he] could no longer see [Webster's] head through the rear windshield." Then, as he approached the door of the vehicle, he witnessed Webster move his arm and remove his hand from underneath the driver's seat. This prompted Officer Chatys to request that Webster exit the vehicle, after which Officer Chatys

¹ Counts 1, 4, and 7 alleged possession of an uncased, loaded, and immediately accessible firearm on his person, in a vehicle and upon a public street. 720 ILCS 5/24-1.6(a)(1)(3)(A), (a)(2)(3)(A) (West 2012). Counts 2, 5, and 8 alleged possession of that firearm without a valid firearm owner's identification (FOID) card. 720 ILCS 5/24-1.6(a)(1)(3)(C), (a)(2)(3)(C) (West 2012). Counts 3, 6, and 9 alleged possession of that firearm on his person, in a car, and upon a public street while under 21 years of age. 720 ILCS 5/24-1.6(a)(1)(3)(I), (a)(2)(3)(I) (West 2012).

² The officer's first name does not appear in the record.

observed the barrel of a handgun protruding from underneath the driver's seat. The officers recovered a loaded and uncased .32 caliber semi-automatic pistol and arrested Webster.

¶ 6 Officer Chatys read Webster his *Miranda* rights at the scene and proceeded to escort him to the police station. During that trip, according to Officer Chatys, Webster stated without solicitation, "The last gun was mine too. I beat that s***. I'll beat this one too. You ain't got s*** on me."

¶ 7 At trial, Webster testified in his defense. Webster denied ever possessing the weapon or hiding it under the driver's seat. He also denied ever making any statements to the police officers.

¶ 8 Upon conclusion of the evidence, the trial court found Webster guilty on all counts. The court then sentenced Webster on count 2—possession of a firearm without a valid FOID card (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012))—and merged the remaining counts. Webster now appeals his conviction.

¶ 9 ANALYSIS

¶ 10 On appeal, Webster argues: (1) the State failed to prove beyond a reasonable doubt that he constructively possessed a firearm; and (2) the AUUW statute under which he was convicted is unconstitutional.

¶ 11 I. Reasonable Doubt

¶ 12 Webster first argues we should reverse his conviction because the State failed to prove beyond a reasonable doubt that he constructively possessed the firearm. In reviewing Webster's challenge to the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209

(2004). "It is not necessary that the trier of fact find beyond a reasonable doubt as to each link on the chain of circumstances." *Id.* "Rather, the trier of fact must find only that the evidence taken together supports a finding of the defendant's guilt beyond a reasonable doubt." *Id.* This court will not reverse a decision by the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *Id.*

¶ 13 To establish constructive possession, the State must prove two elements: (1) the defendant had knowledge of the presence of the contraband; and (2) the defendant had immediate and exclusive control over the area where the weapon was found. *People v. Nesbit*, 398 Ill. App. 3d 200, 209 (2010). As evidence, the State offered the testimony of Officer Chatys establishing Webster leaning over and reaching under the seat where the weapon was found, and Webster admitting, "The last gun was mine too." The trial court's acceptance of this testimony is entitled to great deference. *People v. Hill*, 2012 IL App (1st) 102028, ¶ 41. And, if believed, the testimony would certainly suffice to prove constructive possession, considering Webster's vicinity to the contraband, his movements within the automobile, and his subsequent admission of ownership.

¶ 14 Nonetheless, Webster argues the testimony of Officer Chatys lacks credibility because there is no way he could have viewed Webster's hand from where he stood in relation to the vehicle. Webster also adds that we should not construe his statements to the police as an admission of ownership, but rather a denial. We do not find these arguments persuasive.

¶ 15 First, we do not agree it is necessarily impossible that Officer Chatys could view Webster's hand while approaching the vehicle from a few feet away. The record does not establish that Officer Chatys approached the window from such an angle as to interfere with his visibility into the automobile. While Officer Chatys claimed he initially viewed Webster lean

forward from "[a]pproximately seven to ten feet away," he added that he witnessed Webster's hand "coming out from underneath the front driver's seat of the car" as he approached the door, which indicates Officer Chatys was closer to the window and in such a position to observe Webster's hands and arms.

¶ 16 Moreover, we do not see how Webster's statements could be reasonably construed as a denial of possession. The statement "The last gun was mine *too*," necessarily implies ownership of both the weapon recovered from a previous arrest and the pistol recovered that evening. Accordingly, we do not find the trial court's reliance on Officer Chatys' testimony unreasonable, and likewise find the State provided sufficient evidence to convict Webster of AUUW beyond a reasonable doubt.

¶ 17 II. Constitutionality of AUUW Statutes

¶ 18 Webster additionally contends the AUUW statute is unconstitutional "in its entirety," relying on *People v. Aguilar*, 2012 IL 112116, ¶ 22. *Aguilar*, however, did not declare the AUUW statute unconstitutional "in its entirety," but specifically limited its decision to the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d). See *id.* This court has subsequently upheld other forms and sections of the AUUW statute as constitutional and unaffected by *Aguilar*. See, e.g., *People v. Burns*, 2013 IL App (1st) 120929, ¶ 27 (finding constitutional the Class 2 form of the AUUW section at issue in *Aguilar*); *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 22 ("we find that the invalidity of subsection (a)(3)(A) by *Aguilar* is not fatal to the balance of the statute"). Accordingly, we refrain from reversing Webster's conviction on these grounds.

¶ 19 Webster also raises individual challenges to the FOID card requirement and under-21 provision of the AUUW statute. We note, however, the trial court only convicted Webster on the FOID card offense (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)), having merged the other

charges pursuant to the one-act, one-crime rule.

¶ 20 The one-act, one-crime rule prohibits multiple convictions when the convictions are based on precisely the same physical act. *People v. Miller*, 238 Ill. 2d 161, 165 (2010). If the same physical act forms the basis for two separate offenses charged, a defendant could be prosecuted for and found guilty of each offense, but only one conviction and sentence may be imposed. *People v. Segara*, 126 Ill. 2d 70, 76-77 (1988). The remaining unsentenced charges are not final and appealable judgments. *People v. Baldwin*, 199 Ill. 2d 1, 5 (2002). And, consequently, defendant is generally "barred from challenging any aspect of [the unsentenced charges] on appeal." *People v. Sandefur*, 378 Ill. App. 3d 133, 142-43 (2007). We may, however, review arguments pertaining to the unsentenced charges provided we have first vacated the sentenced conviction. See *People v. Ramos*, 339 Ill. App. 3d 891, 905 (2003) (citing *People v. Dixon*, 91 Ill. 2d 346, 354 (1982)).

¶ 21 In this case, the trial court convicted and sentenced Webster on count 2 for violating the FOID card requirement of the AUUW statute. This court has repeatedly held that *Aguilar* does not render this provision unconstitutional and Webster's brief offers us no reason to depart from that holding. See *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 15; *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32; *Henderson*, 2013 IL App (1st) 113294, ¶ 22. Accordingly, we affirm Webster's conviction under count 2. Because we do not vacate the FOID card conviction, we refrain from entertaining Webster's arguments as to the constitutionality of the under-21 provision of the AUUW statute.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 24 Affirmed.