

firearm (UPF). At sentencing, the juvenile court merged respondent's convictions and sentenced him to three years' probation on a single count of AUUW based on his possession of a firearm without a valid Firearm Owner's Identification card (FOID) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)). On appeal, respondent contends: (1) that his AUUW convictions must be vacated pursuant to *People v. Aguilar*, 2013 IL 112116; (2) that *Aguilar* notwithstanding, the provisions of the AUUW statute under which he was convicted are facially unconstitutional; and (3) that the State failed to prove him guilty of UPF beyond a reasonable doubt. For the following reasons, we affirm.

¶ 3

BACKGROUND

¶ 4 On June 22, 2013, Chicago police officer Edward Garcia and his partner responded to a call of shots fired at 7343 South Hermitage Avenue. They arrived to find a block party underway with about 150 people on the street. As they pulled up to the residence in question, Officer Garcia observed a man standing outside look in his direction, grab his waistband, and begin walking towards the house. Officer Garcia exited his vehicle to conduct a field interview, but the man then fled towards the house. Officer Garcia gave chase and observed the suspect discard a handgun while running up a set of stairs to the residence. He then saw respondent, who was standing at the bottom of the stairs, look in his direction, turn away, and also discard a handgun to the side of the porch. Respondent subsequently fled up the stairs while a third individual elbowed Officer Garcia in the face. Officer Garcia's partner maintained pursuit, however, and eventually apprehended both respondent and the initial fleeing suspect. Police later recovered the two discarded handguns and determined that respondent, who was 15 years old at the time, did not have a valid FOID card.

¶ 5 Respondent was charged in a petition for adjudication of wardship with three firearm offenses. Count I alleged that respondent committed AUUW in that he possessed a firearm without a valid FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)). Count II alleged that respondent committed AUUW because he possessed a firearm while under the age of 21 (720 ILCS 5/24-1.6(a)(1), (a)(3)(I) (West 2012)). Count III alleged that respondent committed UPF because he possessed a firearm "of a size which may be concealed upon the person" while under the age of 18 (720 ILCS 5/24-3.1(a)(1) (West 2012)).

¶ 6 Prior to his trial, respondent filed a motion to declare the AUUW statute and subsection (a)(1) of the UPF statute unconstitutional. He asserted, *inter alia*, that the entire AUUW statute was unconstitutional in light of the supreme court's decision in *Aguilar*. Further, he asserted that subsections (a)(3)(C) and (a)(3)(I) of the AUUW statute were facially unconstitutional under the Second Amendment and that subsection (a)(3)(I) also violated the Equal Protection clause.

¶ 7 The juvenile court denied respondent's motion and found the challenged provisions of the AUUW statute constitutional. A bench trial ensued, and respondent was found guilty on all counts. At sentencing, the court found it to be in the best interest and welfare of respondent and the public that respondent be adjudged a ward of the court. The court then merged respondent's convictions and sentenced him to three years' probation on a single count of AUUW based on his possession of a firearm without a valid FOID Card. Respondent timely appealed from that judgment. This court has jurisdiction pursuant to Illinois Supreme Court Rules 660(a) (eff. Oct. 1, 2001), 603 (eff. Feb. 6, 2013), and 606 (eff. Feb. 6, 2013).

¶ 8 ANALYSIS

¶ 9 Respondent contends on appeal that both of his AUUW convictions are unconstitutional and therefore must be vacated. The State initially asserts that respondent's challenge to the

constitutionality of *both* of his AUUW convictions is improper, as the juvenile court only imposed sentence on one of those convictions. The State maintains that, unless this court reverses and vacates respondent's AUUW conviction for possessing a firearm without a valid FOID card, we cannot consider the constitutionality of respondent's alternate AUUW conviction based on his possession of a firearm while under the age of 21, because no sentence was imposed on the age-related AUUW conviction.

¶ 10 It is well settled that "[t]he final judgment in a criminal case is the sentence, and, in the absence of the imposition of a sentence, an appeal cannot be entertained." *People v. Caballero*, 102 Ill. 2d 23, 51 (1984). "Nonetheless, the supreme court has also held that this court should entertain jurisdiction where a greater conviction is vacated so that a nonfinal, unsentenced conviction can be reinstated." *People v. Neely*, 2013 IL App (1st) 120043, ¶ 14 (citing *People v. Dixon*, 91 Ill. 2d 346, 353-54 (1982)).

¶ 11 Here, the juvenile court sentenced respondent to three years' probation on respondent's FOID-related AUUW conviction (Count I), and merged his other age-related AUUW conviction (Count II). Recently, in *Neely*, this court declined to consider a defendant's constitutional challenge to his AUUW conviction where, as here, it was merged at sentencing. *Id.* ¶ 13. We stated:

"Here, no sentence was imposed on defendant's AUUW conviction. Instead, the trial court merged that conviction into, and then imposed sentence upon, the UUWF [unlawful use of a weapon by a felon] conviction. Moreover, defendant's UUWF conviction has not been reversed. As a result, no challenge to his unsentenced conviction for AUUW is properly before us.

Therefore, we will not consider defendant's challenges to his unsentenced AUUW conviction." *Id.* ¶ 15.

In light of *Neely* and supreme court precedent, we agree with the State's position that the only conviction we may review at this time is respondent's AUUW conviction for possessing a firearm without a valid FOID card—for which a sentence was imposed, unless that conviction is reversed. We therefore confine our analysis accordingly.

¶ 12 Respondent claims that his AUUW conviction for possessing a firearm without a valid FOID card is unconstitutional under *Aguilar*. In *Aguilar*, our supreme court held that "the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) violates the right to keep and bear arms, as guaranteed by the second amendment to the United State Constitution." *Aguilar*, 2013 IL 112116, ¶ 22. Respondent acknowledges that he was convicted under subsection (a)(3)(C) of the AUUW statute, rather than the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d). However, he claims that the latter provision is not severable from the AUUW statute. Therefore, he maintains, the entire statute is unconstitutional, and his conviction should be vacated.

¶ 13 This court recently rejected this very same argument in *People v. Henderson*, 2013 IL App (1st) 113294. In *Henderson*, as here, the defendant argued that his conviction under subsection (a)(3)(C) of the AUUW statute had to be reversed because section 24-1.6(a)(1), (a)(3)(A) was not severable from the AUUW statute. *Henderson*, 2013 IL App (1st) 113294, ¶ 16. This court found, to the contrary, that "the invalidity of subsection (a)(3)(A) by *Aguilar* is not fatal to the balance of the statute, particularly the FOID card requirement in subsection (a)(3)(C)," because "subsections (a)(1), (a)(2), and the remaining factors in subsection (a)(3) can stand independently of subsection (a)(3)(A), which is only one of several factors that operate in conjunction with subsection (a)(1) or (a)(2) to comprise the substantive offense." *Id.* ¶ 22. We

explained that "the removal of one factor (subsection (a)(3)(A)) by application of *Aguilar* 'undermines neither the completeness nor the executability of the remaining subsections' " and therefore subsection (a)(3)(A) was not " 'so intertwined with the rest of the statute that the legislature intended the statute to stand or fall as a whole.' " *Id.* We continue to find the *Henderson* court's analysis persuasive and, therefore, reject respondent's argument that subsection (a)(3)(C) of the AUUW statute is unconstitutional under *Aguilar*. See also *People v. Akins*, 2014 IL App (1st) 093418-B, ¶¶ 12-13 (applying the reasoning of *Henderson* to reject defendant's argument that subsection (a)(3)(C) cannot be severed from provision of AUUW statute found unconstitutional in *Aguilar*).

¶ 14 We likewise reject respondent's claim that subsection (a)(3)(C) is facially unconstitutional under the Second Amendment. Here, respondent claims that subsection (a)(3)(C) is unconstitutional "[b]ecause the FOID statute bars all persons under 21 years old from firearm ownership without parental permission, and because persons under 21 have a Second Amendment right to bear arms." This court, in *Henderson*, however, rejected the defendant's argument that "the public carriage of handguns by those under 21 is core conduct subject to second amendment protection. *Id.* ¶ 30. Moreover, in *People v. Taylor*, we again held that subsection (a)(3)(C) did not violate the Second Amendment. 2013 IL App (1st) 110166, ¶ 32. Applying strict scrutiny, we stated that "[t]he portion of the AUUW statute at issue here seeks to protect the public from individuals carrying firearms who should not be permitted to do so." *Id.* ¶ 30 (citing 430 ILCS 65/1 (West 2012)). We noted that "[r]equiring individuals to comply with the FOID card statute is the least restrictive way in which to meet this compelling state interest" and that section (a)(3)(C) therefore survived strict scrutiny. *Id.* ¶ 30¹. We found subsection

¹ The published version of this opinion occasionally refers to "section 24-1.6(a)(1), (a)(3)(A)" when the context shows that it actually means subsection (a)(3)(C).

(a)(3)(C) constitutional under the "text, history, and tradition" approach as well, noting that it was "the state's method to prevent those who present a higher than average risk of misusing a gun, such as minors, felons, or the mentally ill, from legally carrying one in public places." *Id.* ¶ 31. We continue to adhere to the holdings in *Henderson* and *Taylor* (see also *Akins*, 2014 IL App (1st) 093418-B, ¶ 15), and thus conclude that subsection (a)(3)(C) of the AUUW statute is not facially unconstitutional under the Second Amendment. Because we find respondent's conviction of AUUW for possessing a firearm without a valid FOID card to be constitutional, we need not address respondent's remaining arguments, which are directed at his other convictions for which no sentences were imposed.

¶ 15 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 16 Affirmed.