FIFTH DIVISION
May 1, 2015

No. 1-14-3648

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re D.A., a Minor,	)	Appeal from the
	)	Circuit Court of
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Petitioner-Appellee,	)	
	)	No. 14 JD 2169
v.	)	
	)	
D.A., a Minor,	)	Honorable
	)	Andrew Berman,
Respondent-Appellant).	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices McBride and Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Rejecting the respondent's constitutionality challenges to the Illinois aggravated unlawful use of a weapon (AUUW) statute; remanding the case for a determination of which AUUW count is applicable under one-act, one-crime principles.

¶ 2 After a stipulated bench trial, the circuit court of Cook County entered findings of delinquency against respondent D.A. under two subsections of the Illinois aggravated unlawful

use of a weapon (AUUW) statute, based on D.A.'s lack of a currently valid Firearm Owner's Identification (FOID) card (720 ILCS 5/24-1.6(a)(1)/(a)(3)(C) (West Supp. 2013)) and his age (under 21) (720 ILCS 5/24-1.6(a)(1)/(a)(3)(I) (West Supp. 2013)). D.A. was sentenced to six months' probation. On appeal, D.A. contends that subsections (a)(3)(C) and (a)(3)(I) of the AUUW statute are facially unconstitutional. Alternatively, D.A. asks this court to vacate one of his adjudications of delinquency under "one-act, one-crime" principles or remand this matter to the circuit court for a determination of which AUUW count should stand.

¶ 3 Although we reject D.A.'s constitutional challenges, we agree that one of D.A.'s AUUW counts should be vacated. For the reasons discussed herein, we remand this matter to the circuit court for a determination of which count should stand.

¶ 4 BACKGROUND

¶ 5 D.A. was arrested on June 3, 2014, after he was stopped by the Chicago police and a handgun was recovered from his pants pocket; he was 17 years old. A petition for adjudication of wardship filed on the following day alleged that D.A. was delinquent based upon his violation of subsections (a)(1)/(a)(3)(C) and (a)(1)/(a)(3)(I) of the AUUW statute.

¶ 6 On June 12, 2014, D.A., represented by counsel, filed a motion to quash arrest and suppress evidence. He argued that after an "illegal detention and search, officers claim to have obtained a gun" and that "the alleged proceeds are the direct fruit of the illegal seizure and search of [D.A.] and should therefore be excluded from evidence." Also on June 12, 2014, D.A. filed a motion to declare the AUUW statute unconstitutional, both facially and as applied.

¶ 7 During a hearing on August 4, 2014, the court denied D.A.'s motion challenging the constitutionality of the AUUW statute. D.A. and Chicago police officer Jlynn Wallace then testified regarding the events of June 3, 2014.

¶ 8 D.A. testified that at 3:20 a.m., he was driving "[a]t the lakefront by La Rabida Hospital on 67th" with a "couple of my friends." He was stopped by two uniformed officers driving a marked vehicle; D.A. stated "[t]hey pulled in front of me" as he was "still driving." After D.A. stopped his vehicle, the officers "came to the window" and asked for D.A.'s license and registration, which D.A. provided. The officers asked D.A. to step out of the vehicle. D.A. testified that after he stepped out of the vehicle, "I was searched. I was placed in handcuffs and searched." D.A. stated that he was patted down on both the inside and outside of his clothes and the police found a "gun." D.A. testified that the police did not have an arrest warrant or a search warrant and that he did not give them consent to search him. On cross-examination, D.A. confirmed that the police found a loaded .22-caliber nickel and chrome handgun in his pocket.

¶ 9 Officer Wallace testified that she and her partner were patrolling the "La Rabida Hospital park district parking lot" on June 3, 2014. She stated that "the park district close [*sic*] at 11 p.m., and we find a lot of people in the back of the lot there." She testified that at 3:20 a.m., she was speaking with two individuals outside of the door of her vehicle when she saw a vehicle traveling toward her "[p]retty fast." Officer Wallace stated, "I tried to get them to slow down by flashing my spotlight, and they continued to come at a high speed. I was afraid for the people that were standing next to my window talking to me." She told the two individuals that "we were done with the investigation with them" and asked them to leave the lot. When the vehicle "was coming back around to exit," she flashed her lights to "get him to stop." She stated, "I was still in the process of turning my car around, backing up; so I was in the roadway. So he stopped."

¶ 10 Officer Wallace testified that, when the other vehicle stopped, she exited her vehicle; at that time, she was "15 feet maybe" from the other vehicle. She approached the vehicle and could see inside although "the lighting was kind of bad." During the hearing, Officer Wallace made an

in-court identification of D.A. as the person in the driver's seat of the vehicle. She testified that as she was walking toward the vehicle, she saw D.A. "just moving around a lot." She stated, "It looked like he was reaching below the seat or on the side. I couldn't exactly describe what he was reaching for or how far he was reaching, but he was reaching below him." Officer Wallace testified that, when she saw D.A. moving around, she feared for the safety of her and her partner "[b]ecause of the common knowledge of knowing what's going on in the street. It's a lot of -- a lot of danger, a lot of surprises out there." When Officer Wallace reached the vehicle, she asked D.A. to exit the vehicle and he complied. She testified that she then patted him down "as a protective measure" and "felt a bulkiness in his right pocket" that "felt like a gun." She moved D.A. closer to her vehicle and asked him "what did he have in his pocket." Officer Wallace testified that D.A. told her it was a cell phone. She opened D.A.'s pocket and saw "the butt of the gun." D.A. "tried to run" but "[b]y that time he was already cuffed." On cross-examination and on redirect examination, Officer Wallace testified that the "furtive movements" were "during the whole time [D.A.] was in the vehicle" -- both before and after D.A. had provided his driver's license.

¶ 11 After hearing the arguments of counsel, the circuit court denied the motion to quash. Counsel agreed to "stipulate to the testimony" that the court "just heard in the motion," and the State recalled Officer Wallace "for a couple additional questions." Officer Wallace testified that she did not "process the minor" but was able to determine his age – age 17 – based upon his driver's license. She also testified that D.A. was not arrested at his home. When asked "was [D.A.] engaged in any lawful activity under the Wildlife Code," Officer Wallace responded "no." She further testified that D.A. did not have a FOID card.

¶ 12 The trial was continued to October 27, 2014. On that date, D.A.'s counsel sought

reconsideration of the denial of the motion to quash, which the court denied. After noting that "it's a two-count AGG UUW," the court stated that "the State has met their burden with the admission of the evidence that was challenged[.]" At a hearing on December 3, 2014, the court agreed with the probation officer's recommendation and placed D.A. on a "period of six months of probation."

¶ 13 ANALYSIS

¶ 14 D.A. raises two arguments on appeal. First, D.A. contends that subsections (a)(3)(C) and (a)(3)(I) of the AUUW statute are facially unconstitutional because they violate the second amendment of the United States Constitution. U.S. Const., amend.II. Second, D.A. argues in the alternative that one of his adjudications should be vacated to reflect a single AUUW finding under one-act, one-crime principles for D.A.'s single physical act – possessing a handgun on June 3, 2014. We consider each argument in turn.

¶ 15 1. AUUW Constitutionality

¶ 16 The AUUW statute provides, in pertinent part, as follows:

> "(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:

(C) the person possessing the firearm has not been issued a currently valid Firearm Owner's Identification Card; or

* * *

(I) the person possessing the weapon was under 21 years of age and in possession of a handgun, unless the person under 21 is engaged in lawful activities under the Wildlife Code or described in subsection 24-2(b)(1), (b)(3), or 24-2(f)." 720 ILCS 5/24-1.6 (West Supp. 2013).

On appeal, D.A. asserts that subsection (a)(3)(I) "absolutely prohibits the possession of a handgun off one's own property by adults aged 18 to 20." He further states that the "FOID Act *** requires adults aged 18 to 20 to first get permission from a parent before they can get a FOID card and disarms those whose parents are themselves unqualified. *See* 430 ILCS 65/4(a) (West 2014)." D.A. contends that "[b]ecause these provisions infringe upon an individual's fundamental right to bear arms, and do so solely based upon one's status as an adult under the age of 21, subsections (a)(3)(I) and (a)(3)(C) violate the Second Amendment."[1] The State responds, in part, that the Illinois Appellate Court "has repeatedly upheld the constitutionality of both the FOID and age-based AUUW statutes against challenges identical to the ones that respondent raises."

¶ 17 "Statutes are presumed constitutional, and the party challenging the constitutionality of a

[1] The second amendment of the United States Constitution states: "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. In *District of Columbia v. Heller*, 554 U.S. 570, 635-36 (2008), the United States Supreme Court held that the second amendment protects the right to possess a handgun in the home for purposes of self-defense. In *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010), the United States Supreme Court held that the "Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." See U.S. Const., amend.XIV.

statute carries the burden of proving that the statute is unconstitutional." *People v. Aguilar*, 2013 IL 112116, ¶ 15. To overcome the "strong presumption of constitutionality," the party challenging a statute must clearly establish its invalidity. *People v. Mosley*, 2015 IL 115872, ¶ 22. The question of whether a statute is constitutional is a question of law subject to *de novo* review. *Id.*

¶ 18 In *Moore v. Madigan*, 702 F.3d 933, 934 (7th Cir. 2012), the United States Court of Appeals for the Seventh Circuit considered challenges to the Illinois AUUW statute and the Illinois Unlawful Use of Weapons statute (720 ILCS 5/24-1). The crux of the challenges was that these statutes violated the second amendment as interpreted in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and held applicable to the states in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), because the statutes generally prohibited the carrying of guns in public. *Id.* at 934-35. After concluding that the statutes violated the second amendment, the Seventh Circuit ordered its mandate stayed for 180 days "to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and the Second Amendment as interpreted in this opinion, on the carrying of guns in public." *Id.* at 942. Following the *Moore* decision, the Illinois General Assembly enacted the Firearm Concealed Carry Act, which "*inter alia* amended the AUUW statute to allow for a limited right to carry certain firearms in public. See Pub. Act 98-0063 (eff. July 9, 2013)." *Aguilar*, 2013 IL 112116, ¶ 22, fn. 4.

¶ 19 After the AUUW statute was amended in 2013, the Illinois Supreme Court in *People v. Aguilar* held the Class 4 form of AUUW as set forth in section 24-1.6(a)(1), (a)(3)(A), (d) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) – the pre-amendment version of the statute which "categorically prohibit[ed] the possession and use of an operable firearm for self-defense

outside the home" – violated the second amendment. *Aguilar*, 2013 IL 112116, ¶¶ 21-22. On appeal, D.A. contends that "[b]ecause adults 18 and over are among 'the People' " – referenced in the second amendment – "statutes that disarm them, such as subsections (a)(3)(C) and (a)(3)(I) at issue here, violate the Second Amendment for the same reasons as the provisions in *Aguilar*." We do not agree with such a generalization.

¶ 20 In its modified opinion on denial of rehearing, the *Aguilar* court stated that "we reiterate and emphasize that our finding of unconstitutionality in this decision is specifically limited to the Class 4 form of AUUW, as set forth in section 24-1.6(a)(1), (a)(3)(A), (d) of the AUUW statute." *Id.* ¶ 22, fn. 3. The court continued, "We make no finding, express or implied, with respect to the constitutionality or unconstitutionality of any other section or subsection of the AUUW statute." On appeal, D.A. cites no authority directly addressing the constitutionality of subsections (a)(3)(C) and (a)(3)(I) of the AUUW statute. Conversely, the State cites authority – including recent Illinois Supreme Court decisions[2] – upholding the constitutionality of these subsections.

¶ 21 In *People v. Mosley*, 2015 IL 115872, our supreme court considered challenges to various subsections of the AUUW statute, including (a)(3)(C) and (a)(3)(I). The court applied the two-part test for "analyzing the constitutionality of a restriction on the second amendment right to bear arms" that the court had previously adopted in *Wilson v. County of Cook*, 2012 IL 112026, ¶ 41. The *Mosley* court explained the approach:

> "Under this approach, the court first conducts a textual and historical inquiry to determine whether the challenged law imposes a burden on conduct that was

[2] On February 20, 2015, the Illinois Supreme Court issued opinions in *People v. Mosley*, 2015 IL 115872, and *In re Jordan G., a Minor*, 2015 IL 116834; each is discussed herein. As of the date of the filing of this decision, the *Mosley* and *Jordan G.* opinions have not yet been released for publication in the permanent law reports; a petition for rehearing is pending in *Mosley*. We recognize that, until released, each opinion is subject to revision or withdrawal.

> understood to be within the scope of the second amendment's protection at the time of ratification. [Citation.] The regulated activity is categorically unprotected if the challenged law applies to conduct falling outside the scope of the second amendment right. [Citation.] However, if the historical evidence is inconclusive or suggests that the regulated activity is not categorically unprotected, then the court, apply the appropriate level of means-ends scrutiny, conducts a second inquiry into the strength of the government's justification for restricting or regulating the exercise of second amendment rights. [Citations.]" *Mosley*, 2015 IL 115872, ¶ 34.

Referencing the "historical evidence set forth in the decisions cited by *Aguilar*," the *Mosley* court concluded that where "the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protection" (*Mosley*, 2015 IL 115872, ¶ 36, citing *Aguilar*, 2013 IL 112116, ¶ 27), "subsection (a)(3)(C) passes the first half of the *Wilson* analysis, and we are not required to undertake the second half analysis." *Mosley*, 2015 IL 115872, ¶ 36. The *Mosley* court found that the "FOID card requirement of subsection (a)(3)(C) is consistent with this court's recognition that the second amendment right to possess firearms is still 'subject to meaningful regulation.' " *Id.* ¶ 36, citing *Aguilar*, 2013 IL 112116, ¶ 21. Considering subsection (a)(3)(I),[3] the *Mosley* court stated:

> "[W]e similarly find that the restriction on persons under the age of 21 who are not engaged in lawful hunting activities is both historically rooted and not a core

[3] We note that in *Mosley* and other decisions cited herein, the court addressed the constitutionality of the pre-amendment version of subsection (a)(3)(I). 720 ILCS 5/24-1.6 (West 2012). We recognize that the amended version of subsection (a)(3)(I) is at issue in D.A.'s appeal. 720 ILCS 5/24(a)(3)(I) (West Supp. 2013). However, the difference between the pre-amendment and the amended versions of this subsection, *i.e.*, the modified definition of "handgun," does not affect our analysis herein.

> conduct subject to second amendment protection. Moreover, the restriction in subsection (a)(3)(I) provides for multiple exceptions and exemptions to protect the rights of law-abiding persons under the age of 21. [Citations.] Therefore, subsection (a)(3)(I) also passes the first part of the *Wilson* analysis, and as with defendant's challenge to subsection (a)(3)(C), a second half analysis under *Wilson* is unnecessary." *Mosley*, 2015 IL 115872, ¶ 37.

The court concluded that, "under the *Wilson* approach, neither subsection (a)(3)(C), nor subsection (a)(3)(I) violates the second amendment rights of defendant or other 18- to 20-year olds." *Id.* ¶ 38.

¶ 22 In an opinion issued the same day as *Mosley*, the Illinois Supreme Court in *In re Jordan G.*, 2015 IL 116834, addressed constitutionality challenges raised by a 16-year-old respondent charged with multiple AUUW counts. Our supreme court rejected the trial court's ruling that under *Moore*, both the "under 21 restriction" and "FOID card requirement" under subsections (a)(1)/(a)(3)(C) and (a)(1)/(a)(3)(I) were unconstitutional because an element of both sections include a prohibition on the right to carry a firearm outside of the home. *Jordan G.*, 2015 IL 116834, ¶¶ 12-14. The *Jordan G.* court held that "neither *Moore* nor *Aguilar* compel a finding that subsection (a)(1),(a)(3)(C) or subsection (a)(1),(a)(3)(I) are facially unconstitutional." *Id.* ¶ 14. Furthermore, as in *Mosley*, the court rejected the respondent's contention that subsections (a)(3)(C) and (a)(3)(I) are not severable from the provision found to be unconstitutional in *Aguilar*.[4] *Id.* ¶ 19.

[4] Although the State acknowledges that D.A. did "not separately argue that the FOID- and age-based AUUW counts are not 'severable' from those invalidated by *Aguilar*," the State asserts that D.A. "alludes to this oft-raised claim." The State contends that "[b]ecause the CCA [Concealed Carry Act] was purposefully adopted in response to the *Moore* decision with the explicit intent to bring our statutes into compliance with the Second Amendment, the claim that the *earlier*

¶ 23 The *Jordan G.* court also considered the respondent's contentions – similar to those advanced by D.A. on appeal – that "subsections (a)(1), (a)(3)(C) and (a)(1), (a)(3)(I) violate the second amendment rights of those under 21 years of age." *Id.* ¶ 21. After discussing the two-part analysis applied in *Mosley* (2015 IL 115872, ¶ 34), the court stated, in part:

> "[I]n *Aguilar*, this court considered the constitutionality of section 24-3.1(a)(1) of the UPF [unlawful possession of a firearm] statute, which makes it unlawful for those under 18 to possess a firearm of a size which may be concealed on his person. [Citations.] We recognized that the second amendment right to possess firearms is 'subject to meaningful regulation.' [Citation.] We cited with approval several cases finding it evident from a review of the relevant historical record that age based regulations on minors' access to firearms for the purpose of ensuring public safety were commonplace and persisted well beyond the Founding Era. [Citations.] We stated that these cases explained that although minors were in many instances permitted or required to own and possess firearms for military service, 'nothing like *a right* for minors to own and possess firearms has existed at any time in this nation's history. (Emphasis in original.) [Citation.] Accordingly, we concluded that 'the possession of handguns by minors is conduct that falls outside the scope of the second amendment's protections.' *Id.*

---

version of the AUUW statute may have been void *ab initio* is irrelevant since any unconstitutionality was necessarily cured by the new statutes." In light of our supreme court's explicit rejection of a "severability" argument in *Jordan G.*, we need not consider the State's argument that "[t]he fact that the instant offense took place *after* the amended AUUW statute and the CCA statute took effect is fatal to any argument that the FOID- and age-based AUUW statutes are not 'severable' from the portion of the AUUW statute invalidated by *Aguilar*." See also *Mosley*, 2015 IL 115872, ¶ 31 (court stating "[w]e *** believe that the legislature would find that subsections (a)(3)(C) and (a)(3)(I) can stand independently with the inclusion of subsection factor (a)(3)(A). This severability from subsection (a)(3)(A) undermines neither the completeness of, nor the ability to, execute the remaining subsections of (a)(3).").

> Notably, the term 'minor' must be considered in the context of the right at issue, and as historically understood, generally applied to individuals under the age of 21 and remained under 21 in most states until the 1970s. [Citations.] Thus, we find our conclusion in *Aguilar*, that age based restrictions on the right to keep and bear arms are historically rooted, applies equally to those persons under 21 years of age. We confirmed this conclusion in *Mosley*, where we held that the public carrying of firearms by those persons under 21 years of age is conduct that falls outside the scope of the second amendment, and held that 'neither subsection (a)(3)(C) nor (a)(3)(I) violated the second amendment rights of * * * 18- to 20-year old persons.' [Citation]." *Jordan G.*, 2015 IL 116834, ¶ 24-25.

The Illinois Supreme Court thus rejected the respondent's second amendment challenge to subsections (a)(1)/(a)(3)(C) and (a)(1)/(a)(3)(I) of the AUUW statute. *Id.* ¶ 25.[5]

¶ 24 The *Mosley* and *Jordan G.* decisions are consistent with decisions of this court repeatedly upholding the constitutionality of both the FOID card and age-based AUUW subsections against challenges similar to those raised by D.A. See, *e.g.*, *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 46, *People v. Fields*, 2014 IL App (1st) 130209, ¶ 64; *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32; *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 35. We find no reason to depart from these holdings.

¶ 25 In conclusion, we do not find subsections (a)(3)(C) or (a)(3)(I) of the AUUW statute to be facially unconstitutional, and we decline D.A.'s request to reverse his adjudications on

[5] The State in *Jordan G.* also argued that the respondent – a "delinquent minor who violated the terms of his probation by possessing firearms" – was not the type of law-abiding citizen that the United States Supreme Court recognized as having second amendment rights, and thus subsection (a)(3)(A) of the AUUW statute could be validly applied to the respondent. *Jordan*, 2015 IL 116834, ¶ 27. The court viewed the State's argument as essentially a request to overrule its holding in *Aguilar*, which the court declined to do. *Id.* ¶ 28.

constitutional grounds.

¶ 26 II. One-Act, One-Crime Rule

¶ 27 D.A. contends that he was "convicted of two counts" of AUUW for the single act of possessing one handgun, in violation of the "one-act, one-crime" rule. He asks that we vacate one of his convictions or remand the cause to the trial court for a determination of which AUUW adjudication should stand.[6] The State agrees that "only one count of AUUW can serve as the basis for respondent's adjudication of delinquency" and acknowledges that "this Court should ordinarily remand the case to the circuit court to resolve which count is the more 'serious,' and enter the conviction on that count." "Alternatively," the State posits, "given that respondent has expressed no preference as to which count upon which his adjudication should stand, as a matter of convenience and judicial economy, the People ask that this Court simply issue an order directing the trial court to enter judgment on the age-based count of AUUW pursuant to 720 ILCS 5/24-1.6(a)(1)/(a)(3)(I)."

¶ 28 As a preliminary matter, we agree with the State's assessment that "the record is unclear as to which count of AUUW the adjudication was based upon." The petition for adjudication of wardship filed on June 4, 2014, charged D.A. with delinquency pursuant to two subsections of the AUUW statute: the FOID card subsection ((a)(1)/(a)(3)(C)) and the "under 21" subsection ((a)(1)/(a)(3)(I)). As noted above, the circuit court referred to a "two-count AGG UUW" during the proceedings on October 27, 2014. The social investigation report filed on December 3, 2015 referenced the FOID card and the "under 21" counts and stated that "[t]he minor was found

[6] Although not raised by the parties, we note that D.A.'s one-act, one-crime argument was not raised before the trial court. However, our supreme court has stated that "forfeited one-act, one-crime arguments are properly reviewed under the second prong of the plain-error rule because they implicate the integrity of the judicial process." *People v. Nunez*, 236 Ill. 2d 488, 493 (2010).

guilty on all counts."[7] Despite the foregoing, none of the written orders included in the record on appeal, including the "Plea of Guilty – Trial Order" (the Trial Order) entered on October 27, 2014, and the probation and sentencing orders entered on December 3, 2014, referenced the particular AUUW subsections under which D.A. was found delinquent.[8] Given the potentially significant consequences of a finding of delinquency, we believe the adjudication of D.A.'s delinquency should be as clear and precise as possible. *In re Samantha V.*, 234 Ill. 2d 369, 373 (2009) ("In the event of a future encounter with the juvenile or criminal justice system, it is hard to imagine that the State would merely inform a court preparing to set bond, fashion a sentence, or entertain matters related to juvenile detention or parole of the mere fact of a juvenile delinquency finding without seeking to inform the court of the crime committed, particularly if those crimes were crimes of violence.").

¶ 29 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). "[I]f a defendant is convicted of two offenses based upon the same single physical act, the conviction for the less serious offense must be vacated." *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The one-act, one-crime rule applies to juvenile proceedings. *Samantha V.*, 234 Ill. 2d at 375 (2009). "Whether a conviction should be vacated under the one-act, one crime doctrine is a question of law which the court reviews *de novo*." *In re Angel P.*, 2014 IL App (1st) 121749, ¶ 63.

¶ 30 The same physical act, *i.e.*, D.A.'s possession of the handgun on June 3, 2014, formed the

[7] We note that the earlier version of subsection (a)(3)(I) was referenced in the petition for adjudication of wardship and the social investigation report. However, the parties on appeal both quote and cite, or expressly acknowledge the applicability of, the current version of the statute.

[8] The "Order to Compel Minor-Respondent to Submit to the Taking of Buccal Swabs," entered on December 3, 2014, provided in part that D.A. was adjudicated delinquent "for the offense of aggravated unlawful use weapon, in violation of 720 ILCS 5/24-1.6(a)(1)." The order does not reference the FOID card ((a)(3)(C)) or "under 21" ((a)(3)(I)) subsections of the AUUW statute.

basis for seemingly two adjudications of delinquency. We thus agree with the parties that under the one-act, one-crime rule, D.A. should be adjudicated delinquent under a single count of the AUUW statute. Specifically, D.A. "should be sentenced on the most serious offense and the less serious offense should be vacated." *Samantha V.*, 234 Ill. 2d at 379. "In determining which offense is the most serious, we are instructed to consider the plain language of the statutes, as common sense that the legislature would prescribe greater punishment for the offense it deems the more serious." *Id.* In D.A.'s case, however, both (a)(1)/(a)(3)(C) and (a)(1)/(a)(3)(C) are Class 4 felonies (720 ILCS 5/24-1.6(d) (West Supp. 2013)).

¶ 31 "If the punishments are identical, we are instructed to consider which offense has the more culpable mental state." *Samantha V.*, 234 Ill. 2d at 379. In this case, however, as the State observes, "the mental elements are identical." Under these circumstances, "we cannot determine which is the more serious offense." *Id.* Accordingly, we remand the matter to the circuit court for that determination. On remand, we direct the circuit court to make such determination and to correct the Trial Order to specify the AUUW count under which D.A. is adjudicated delinquent and vacate the other count.[9]

¶ 32 CONCLUSION

¶ 33 In conclusion, we reject D.A.'s constitutional challenges to the AUUW statute but agree that the cause should be remanded for a determination by the trial court of which AUUW adjudication should stand. We thus affirm the judgment of the trial court in part and, as set forth herein, remand this matter to the circuit court with directions to determine the more serious offense and to correct the Trial Order accordingly.

¶ 34 Affirmed in part, vacated in part and remanded with directions.

[9] The "Sentencing Order" and the "Probation Order" do not indicate the offenses for which D.A. was found guilty and thus do not require modification.