

No. 1-12-0320

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
	)	Cook County.
v.	)	
	)	No. 10 CR 16895
TYRIS JACKSON,	)	
	)	Honorable
Defendant-Appellant.	)	James M. Obbish,
	)	Judge Presiding.

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JUSTICE HOWSE delivered the judgment of the court.  
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *HELD:* Defendant's conviction under the AUUW statute for carrying a weapon that was uncased, loaded and immediately accessible is vacated in light of *People v. Burns*, 2015 IL 117387. This matter is remanded to the trial court for sentencing on defendant's merged conviction.

¶ 2 Following a bench trial, defendant Tyris Jackson was convicted of aggravated unlawful use of a weapon (AUUW), unlawful use of a weapon by a felon (UUWF), and armed habitual

criminal while on mandatory supervised release. The trial court dismissed defendant's conviction under the armed habitual criminal statute prior to sentencing on the basis that the underlying felony admitted into evidence by the State was not among the statutorily-required offenses needed to support the offense of armed habitual criminal. Defendant's remaining convictions were merged, and defendant was sentenced to a six-year prison term for his conviction under the AUUW statute. His sentence was enhanced to a category 2 felony due to his prior 2008 conviction of aggravated battery of a police officer.

¶ 3 On appeal, defendant contends that the AUUW statute violates both federal and state guarantees of an individual's right to bear arms and is unconstitutional, making his conviction void. For the reasons that follow, we vacate defendant's AUUW conviction and remand this matter to the trial court for sentencing on the merged conviction of unlawful use of a weapon by a felon (UUWF).

¶ 4 **BACKGROUND**

¶ 5 On September 8, 2010, at approximately 11:00 p.m., while Chicago police officers Robert Long and Rocio Salgado were out patrolling, Long observed defendant riding a bicycle near 4800 South Drexel. As the officers approached defendant, Long observed defendant put a silver handgun in his right jacket pocket. Long announced his office and ordered defendant to stop. Defendant began to flee and Long followed. Defendant ultimately dropped his bike at 4825 South Drexel, hopped a fence and continued running. The officers called for backup, and defendant was subsequently arrested by Vacek in the backyard of 927 East 49th Street. When the officers went back to where defendant had dropped his bike, they recovered a silver Smith & Wesson .38 special revolver next to the bike. Long recognized the gun to be the same gun that

he saw defendant put into his pocket earlier. Four live rounds and two spent shell casings were removed from the gun.

¶ 6 Defendant was convicted of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2008)), UUWF (720 ILCS 5/24-1.1(a) (West 2008)), and AUUW (720 ILCS 5/24-1.6(a)(1) (West 2008)). The trial court subsequently vacated the armed habitual criminal conviction, merged defendant's convictions and sentenced defendant to a six-year prison term for AUUW based on the fact that the firearm found next to defendant's bike was uncased, loaded and immediately accessible. Defendant's conviction was enhanced to a class 2 felony due to his prior 2008 conviction of aggravated battery of a police officer. Defendant's motion to reconsider his sentence was denied, and this timely appeal followed.

¶ 7 In this appeal, we initially filed a Rule 23 order on September 26, 2013, wherein we vacated defendant's AUUW conviction based upon our supreme court's ruling in *People v. Aguilar*, 2013 IL 112116. The State then filed a petition for rehearing, and we stayed the matter, pending the outcome of our supreme court's rehearing of *Aguilar*. On rehearing, the supreme court modified its ruling in *Aguilar* and, in response, we issued a new Rule 23 order on January 23, 2014 affirming defendant's conviction under the Class 2 form of the AUUW statute. We subsequently withdrew the January 23, 2014 Rule 23 order and ordered the parties' to file an answer and reply addressing the issues raised in the State's petition for rehearing.<sup>1</sup> On May 1, 2014, we entered a Rule 23 order affirming defendant's Class 2 AUUW conviction based upon our supreme court's modified ruling in *Aguilar*. Subsequent to that filing, our supreme court decided *People v. Burns*, 2015 IL 117387, and as a result of its ruling in *Burns*, which modified its ruling in *Aguilar*, the supreme court issued a supervisory order directing this court to vacate

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<sup>1</sup> Defendant filed a petition for rehearing following the January 23, 2014 order; however, defendant's petition was withdrawn in light of the fact that we withdrew our January 23, 2014 order and allowed the parties an opportunity to brief the State's petition for rehearing.

our May 1, 2014 decision and reconsider it in light of *Burns*. Therefore, for the reasons that follow, we vacate defendant's AUUW conviction in light of the ruling in *Burns* and remand this matter to the trial court for sentencing on defendant's merged conviction of UUWF.<sup>2</sup>

¶ 8 ANALYSIS

¶ 9 Standing

¶ 10 Before addressing defendant's constitutional claims, we must first address the State's position that defendant lacks standing to challenge the constitutionality of the AUUW statute. The State argues that defendant does not have standing to challenge the constitutionality of the AUUW statute because he relinquished his right to possess a firearm as a parolee serving a mandatory supervised release (MSR) and because he cannot enjoy the protections of the second amendment since he was previously convicted of a felony. We disagree with the state's argument and find the defendant does have standing challenge the constitutionality of the AUUW statute.

¶ 11 "The doctrine of standing is intended to insure that issues are raised and argued only by those parties with a real interest in the outcome of the controversy." *People v. Greco*, 204 Ill. 2d 400, 409 (2003). "To have standing to challenge the constitutionality of a statute, one must have sustained or be in immediate danger of sustaining a direct injury as a result of enforcement of the challenged statute." *Chicago Teachers Union, Local 1 v. Board of Education of the City of Chicago*, 189 Ill. 2d 200, 206 (2000); *People v. Hill*, 199 Ill. 2d 440, 445 (2002) ("A defendant does not ordinarily have standing to challenge a statute as it might be applied to others in different circumstances."). "The claimed injury must be (1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the

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<sup>2</sup> Justice Palmer participated in this appeal and is no longer with this court. Justice Burke has replaced Justice Palmer and has reviewed the briefs in this appeal.

grant of the requested relief.” (Internal quotation marks omitted.) *Chicago Teachers Union*, 189 Ill. 2d at 207. “Standing is an element of justiciability, and it must be defined on a case-by-case basis.” *Greco*, 204 Ill. 2d at 409.

¶ 12 Here, while we realize that defendant was currently serving a term of MSR, which required him to refrain from possessing a firearm, and that defendant was previously convicted of a felony, defendant was not convicted of violating his MSR. Here, defendant was convicted of possessing a weapon that was "uncased, loaded, and immediately accessible" under the AUUW statute and was sentenced to 6 years in prison for this violation. As such, he sustained a direct injury as a result of the AUUW statute being enforced against him. As stated by our supreme court in *People v. Aguilar*, 2013 IL 112116, ¶ 12 (2013), a case in which the defendant was convicted under the AUUW statute, "[i]f anyone has standing to challenge the validity of these sections, it is defendant. Or to put it another way, if defendant does *not* have standing to challenge the validity of these sections, then no one does." *Id.* at ¶ 12.

¶ 13 Had defendant been charged with violating his MSR and the State sought to take away his firearm or have him re-incarcerated for the violation, or had the punishment under the AUUW statute been taking away his weapon or re-incarcerating defendant—punishments that would not be any greater than those imposed for violating his MSR--we would likely agree that defendant had no standing to challenge the constitutionality of the AUUW statute. However, in this case, the consequence of defendant's violation of the AUUW statute was not merely taking away his weapon or re-incarcerating him. Defendant here suffered a direct adverse consequence for his violation of the AUUW statute because he was sentenced to a separate six-year imprisonment specifically for violating the AUUW statute. These consequences were distinct from and went beyond any punishment he could have received for violating his MSR. As such,



“(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, any pistol, revolver, stun gun or taser or other firearm; or

(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own abode or fixed place of business, any pistol, revolver, stun gun or taser or other firearm; and

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded, and immediately accessible at the time of the offense[.]

\* \* \*

(d) Sentence. Aggravated unlawful use of a weapon is a Class 4 felony; a second or subsequent offense is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years. Aggravated

unlawful use of a weapon by a person who has been previously convicted of a felony in this State or another jurisdiction is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years.”  
720 ILCS 5/24–1.6 (West 2002).

¶ 18 In *Burns*, our supreme court held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute (720 ILCS 5/24–1.6(a)(1), (a)(3)(A) (West 2008)), is facially unconstitutional because it violates the right to keep and bear arms (*Burns*, 2015 IL 117387, ¶ 32) since, on its face, the "statutory provision constitutes a flat ban on carrying ready-to-use guns outside the home." *Id.* at ¶ 25. In coming to this conclusion, the court commented:

"Admittedly, in *Aguilar*, we specifically limited our holding of facial invalidity to a so-called 'Class 4 form' of the offense. See *Aguilar*, 2013 IL 112116, ¶ 21. However, we now acknowledge that our reference in *Aguilar* to a 'Class 4 form' of the offense was inappropriate. No such offense exists. There is no 'Class 4 form' or 'Class 2 form' of aggravated unlawful use of a weapon." *Burns*, 2015 IL 117387, ¶ 22.

As such, given our supreme court's ruling in *Burns*, which held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW is facially unconstitutional without limitations, we must vacate defendant's AUUW conviction. In light of the ruling in *Burns*, the State has also requested that we vacate defendant's AUUW conviction; however, the State further requests that we remand this matter to the trial court for sentencing on defendant's merged conviction of UUWF.



¶ 19 Because defendant was convicted of UUWF at his bench trial, but that conviction was merged into the AUUW conviction for sentencing purposes, we find it appropriate to remand this matter to the trial court for sentencing on defendant's UUWF conviction. See *People v. Dixon*, 91 Ill. 2d 346, 353-54 (1982) (where appeal was properly before appellate court with regard to defendant's conviction for armed violence and aggravated battery, and where failure to impose sentences upon unappealed convictions was related to appealed convictions, appellate court was authorized to remand cause for imposition of sentence on unappealed convictions). In the absence of a sentence on the UUWF conviction, there is no final judgment. See 730 ILCS 5/5-1-12 (West 2008) (" 'Judgment' means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.").

¶ 20

#### CONCLUSION

¶ 21 For the foregoing reasons, defendant's Class 2 conviction under the AUUW statute is vacated in light of our supreme court's ruling in *People v. Burns* and the cause is remanded to the trial court for sentencing on defendant's merged conviction.

¶ 22 Vacated in part and remanded.