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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 Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 17557
	)	
FRANK SPECIALE,	)	
	)	The Honorable
Defendant-Appellant.	)	Clayton J. Crane,
	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Justices Fitzgerald Smith and Mason concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's UUWF conviction and sentence are affirmed pursuant to our supreme court's recent decision in *People v. McFadden*, 2016 IL 117424.

¶ 2 Following a bench trial, defendant Frank Speciale was found guilty of one count of unlawful use of a weapon by a felon (UUWF) and three counts of aggravated unlawful use of a weapon (AUUW). The trial court merged the convictions and sentenced defendant to four years' imprisonment, followed by two years of mandatory supervised release, on the UUWF conviction. Initially on appeal, we vacated defendant's UUWF conviction and sentence

“because the State did not prove an essential element of the offense where it alleged in the charging instrument and proved at trial a predicate offense that has been declared unconstitutional and void *ab initio*.” See *People v. Speciale*, 2015 IL App (1st) 132376-U, ¶ 18 (quoting *People v. McFadden*, 2014 IL App (1st) 102939, ¶ 43, *aff’d and rev’d in part*, 2016 IL 117424).

¶ 3 On September 28, 2016, the supreme court denied the State’s petition for leave to appeal but entered a supervisory order directing us to vacate our judgment and to reconsider the matter in light of *People v. McFadden*, 2016 IL 117424, to determine if a different result is warranted. For the reasons that follow, we conclude that a different result is warranted.

¶ 4 BACKGROUND

¶ 5 The record shows that defendant was charged by information, under case number 12 CR 17557, with one count of UUWF and six counts of AUUW. Specifically, count one charged defendant with UUWF for knowingly possessing a firearm on his person after having been previously convicted of AUUW under case number 08 CR 9332. 720 ILCS 5/24-1.1(a) (West 2012). Count two charged defendant with AUUW for knowingly carrying an “uncased, *loaded* and immediately accessible” firearm inside a vehicle outside his home.<sup>1</sup> 720 ILCS 5/24-1.6(a)(1)/(3)(B) (West 2012). Count three charged defendant with AUUW for knowingly carrying a firearm inside a vehicle outside his home without having been issued a currently valid Firearm Owner’s Identification (FOID) card. 720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2012). Count four charged defendant with AUUW for knowingly carrying an uncased, unloaded firearm outside his home when the ammunition was immediately accessible. 720 ILCS 5/24-

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<sup>1</sup> Subsection (3)(B) of the AUUW statute provides that “the firearm possessed was uncased, *unloaded* and the *ammunition* for the weapon was immediately accessible at the time of the offense.” (Emphasis added.) 720 ILCS 5/24-1.6(3)(B) (West 2012).

1.6(a)(1)/(3)(B) (West 2012). Count five charged defendant with AUUW for knowingly carrying an uncased, unloaded firearm outside his home without having been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2012). Count six charged defendant with AUUW for knowingly carrying a firearm on his person, upon a public street and the firearm was “uncased, unloaded and the ammunition for the weapon was immediately accessible.” 720 ILCS 5/24-1.6(a)(2)/(3)(B) (West 2012). Count seven charged defendant with AUUW for knowingly carrying a firearm on his person, upon a public street, and without having been issued a currently valid FOID card. 720 ILCS 5/24-1.6(a)(2)/(3)(C) (West 2012). As to sentencing, the State further alleged in each of the six AUUW counts, “The State shall seek to sentence [defendant] as a Class 2 offender in that he has been previously convicted of the offense of [AUUW] under case number 08CR09332.” Additionally, the supplemental common law record contains the information in case number 08 CR 9332, charging defendant with four counts of AUUW, and a corresponding certified statement of defendant’s Class 4 AUUW conviction under count one, which was introduced by the State at trial.

¶ 6 Briefly stated, the evidence presented at trial showed that at 1:37 a.m. on September 10, 2012, Chicago police officer Brian Cahill and Mark Foster responded to a report of shots fired at a gas station located at the intersection of Archer Street and Halsted Avenue. There, the officers observed a minivan matching the suspect vehicle description given over the radio and followed it for a short distance. Officer Foster was driving when Officer Cahill observed the hand of a white male toss a handgun out of the front passenger window and onto a city garbage can in an alley. Officer Cahill identified defendant in court as the white male that he observed seated in the front passenger seat of the minivan when it was stopped. A .380-caliber handgun with an empty five-round magazine was recovered and inventoried. Five .380-caliber cartridge casings were

recovered from the ground at the gas station. During questioning under *Miranda*, defendant explained that he had the handgun because he had been shot by a street gang known as the Satan Disciples. In addition, the parties stipulated that defendant did not possess a valid FOID card at the time, and the State introduced a certified statement of defendant's prior Class 4 AUUW conviction under case number 08 CR 9332. After the State rested its case-in-chief, the trial court granted defendant's motion for a directed verdict on count two, which alleged AUUW based on knowingly carrying a loaded firearm, because the evidence established that the handgun was unloaded or empty. However, the trial court denied the motion as to the remaining counts in the information. Thereafter, defendant presented the testimony of his cousin, Daniel Massey, the driver of the minivan. According to Massey, defendant sat in the back of the minivan where the windows do not open and a Hispanic male acquaintance sat in the front passenger seat.

¶ 7 The trial court found defendant guilty of counts one (UUWF), three, five, and seven (AUUW), and "not guilty" of counts two, four, and six. The trial court merged the convictions and sentenced defendant to four years' imprisonment, followed by two years of mandatory supervised release, for his conviction on count one for UUWF.

¶ 8 ANALYSIS

¶ 9 In this court, defendant contends that his UUWF conviction must be vacated because the underlying predicate felony, his prior Class 4 AUUW conviction, was rendered void *ab initio* by *People v. Aguilar*, 2013 IL 112116. In *Aguilar*,<sup>2</sup> our supreme court held the Class 4 version of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)), to be facially unconstitutional in violation of the second amendment right to bear arms. *Id.* at ¶ 22. Defendant

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<sup>2</sup> After the original Rule 23 order in this appeal was filed, our supreme court decided *People v. Burns*, 2015 IL 117387, ¶ 25, which clarified its holding in *Aguilar*, stating that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute is facially unconstitutional "without limitation."

argues that because his prior Class 4 AUUW conviction is void *ab initio* under *Aguilar*, the State could not rely on it in satisfaction of the prior felony conviction element of UUWF.

¶ 10 We have an independent duty to vacate void orders and may *sua sponte* declare an order void. *People v. Thompson*, 209 Ill. 2d 19, 27 (2004). A statute that is held facially unconstitutional is void *ab initio*, or as if the law never existed. *People v. Tellez-Valencia*, 188 Ill. 2d 523, 526 (1999). Correspondingly, a trial court is without jurisdiction to enter a conviction against a defendant based on conduct that does not constitute a criminal offense. *People v. Dunmore*, 2013 IL App (1st) 121170, ¶ 9. The constitutionality of a criminal statute may be raised at any time, subject to *de novo* review. *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 11.

¶ 11 To sustain a conviction for UUWF, the State must prove that defendant knowingly possessed a weapon or ammunition, and that he had previously been convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2012). At trial in this case, the State entered into evidence a certified statement of defendant's Class 4 AUUW conviction in case number 08 CR 9332, and the court found defendant guilty of UUWF (count one) and AUUW (counts three, five, and seven), but "not guilty" of the remaining three counts of AUUW (counts two, four, and six).

¶ 12 In *McFadden*, 2016 IL 117424, a direct appeal from an UUWF conviction based on the defendant's possession of a firearm when he had previously been convicted of AUUW, our supreme court rejected the defendant's argument that *Aguilar* barred the State's use of a prior AUUW conviction to establish the predicate for the UUWF charge albeit the prior conviction had not been vacated. The court explained that the UUWF statute requires the State to prove only "the defendant's felon status," and not the predicate felony at trial. *Id.* at 27 (quoting *People v. Walker*, 211 Ill. 2d 317, 337 (2004)). The court added that "[n]othing on the face of

the statute suggests any intent to limit the language to only those persons whose prior felony convictions are not later subject to vacatur.” *Id.* As the court observed, the statutory language is “consistent with the common-sense notion that a disability based upon one’s status as a convicted felon should cease only when the conviction upon which that status depends has been vacated.” *Id.* at ¶ 29 (quoting *Lewis v. United States*, 445 U.S. 55, 61 n.5 (1980)). The purpose of the UUWF statute, the court explained, is to protect the public from potentially irresponsible and dangerous persons, and thus, “it is immaterial whether the predicate conviction ‘ultimately might turn out to be invalid for any reason.’” *Id.* (quoting *Lewis*, 445 U.S. at 62). Put another way, the legislation is concerned with the function of the prior conviction as a condition for disqualification from obtaining a firearm. *Id.*

¶ 13 The *McFadden* court elaborated:

“It is axiomatic that no judgment, including a judgment of conviction, is deemed vacated until a court with reviewing authority has so declared. As with any conviction, a conviction is treated as valid until the judicial process has declared otherwise by direct appeal or collateral attack. Although *Aguilar* may provide a basis for vacating defendant’s prior 2002 AUUW conviction, *Aguilar* did not automatically overturn that judgment of conviction. Thus, at the time defendant committed the [UUWF] offense, defendant had a judgment of conviction that had not been vacated and that made it unlawful for him to possess firearms.” *Id.* at ¶ 31.

¶ 14 Under these circumstances, the *McFadden* court concluded that the defendant’s prior 2002 AUUW conviction properly served as proof of the predicate felony conviction for UUWF. *Id.* at ¶ 37.

¶ 15 Here, defendant’s AUUW conviction in case number 08 CR 9332 was not vacated prior to his instant conviction for UUWF. Pursuant to *McFadden*, we conclude that defendant’s prior AUUW conviction properly served as the predicate felony for his UUWF conviction where the State proved defendant’s “felon status” by introducing a certified statement of that prior conviction at trial. *People v. Perkins*, 2016 IL App (1st) 150889, ¶ 7 (“the State need only prove the fact of a prior felony conviction to support a UUWF conviction”); accord *People v. Smith*, 148 Ill. 2d 454, 465 (1992) (certified statement of conviction of person with same name as defendant was sufficient to establish that defendant had a prior conviction).

¶ 16 CONCLUSION

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

¶ 18 Affirmed.