

No. 1-11-1173

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 10 CR 7236
)	
LARRY LAWRENCE,)	
)	Honorable William G. Lacy,
Defendant-Appellant.)	Judge Presiding.
)	

JUSTICE DELORT* delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant’s convictions for aggravated unlawful use of a weapon violated neither his second amendment nor his equal protection rights. One of defendant’s convictions for aggravated unlawful use of a weapon and his conviction for unlawful use of a weapon by a felon must, however, be vacated under the one-act, one-crime rule.

¶ 2 After a bench trial, defendant Larry Lawrence was convicted of two counts of aggravated unlawful use of a weapon (AUUW) and one count of unlawful use of a weapon by a felon

* Justice Delort replaces Justice Karnezis on the panel. See Ill. S. Ct., M.R. 1062 (eff. Dec. 3, 2012).

(UUWF). The first AUUW count alleged a violation of section 24-1.6 (a)(1), (a)(3)(A) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1.6 (a)(1), (a)(3)(A) (West 2008)), which prohibited carrying a concealed, uncased, and loaded handgun outside the home. Defendant was sentenced as a Class 2 offender on that count under section 24-1.6(d)(2) of the Code (720 ILCS 5/24-1.6(d)(2) (West 2008)), because he had a previous felony conviction. The second AAUW count alleged a violation of section 24-1.6 (a)(1), (a)(3)(I) of the Code (720 ILCS 5/24-1.6 (a)(1), (a)(3)(I) (West 2008)), which prohibited persons under 21 from carrying handguns outside the home. The defendant was 20 years old at the time of the offense. The UUWF count alleged a violation of section 24-1.1(a) of the Code (720 ILCS 5/24-1.1(a) (West 2008)), which prohibits felons from carrying handguns.

¶ 3 The trial court sentenced him to four years' imprisonment on each count, to be served concurrently. In 2012, we rejected his claim that his conviction for AUUW violated the second amendment, but we vacated one of his convictions for AUUW and his conviction for UUWF under the one-act, one-crime rule. *People v. Lawrence*, 2012 IL App (1st) 111173-U.

¶ 4 Our supreme court denied defendant's petition for leave to appeal, but it entered a supervisory order directing us to vacate our earlier order and reconsider our judgment in light of *People v. Aguilar*, 2013 IL 112116. *People v. Lawrence*, No. 114605 (Jan. 29, 2014). We vacated the earlier order, and directed the parties to submit supplemental briefs.

¶ 5 In his initial and supplemental briefs in this court, the defendant presents four grounds for appeal: (1) the first AAUW conviction must be vacated because *Aguilar* struck down the underlying statute; (2) the second AAUW conviction is constitutionally invalid because the second amendment grants persons under 21 the right to carry handguns outside the home; (3) the distinction in the AAUW law between those under 21 and those older violates equal protection

principles; and (4) his three convictions for the same act violate the one-act, one-crime doctrine. The defendant does not challenge his UUWF conviction on any constitutional grounds. The ultimate result defendant seeks is that only the UUWF conviction would remain. Since being convicted, defendant has served his sentence and completed his mandatory supervised release.

¶ 6 Upon further review, we conclude that the ultimate result we reached in 2012 was correct. Accordingly, we reject all of the defendant's constitutional claims; vacate two of the three convictions under the one-act, one-crime rule; and leave one of the AUUW convictions intact.

¶ 7 **BACKGROUND**

¶ 8 The defendant does not challenge the sufficiency of the evidence against him. Therefore, we summarize the most basic facts relevant to this appeal. Chicago Police Sergeant Daniel Gallagher testified that he had pulled a car over for a traffic violation on the 6200 block of Carpenter. As he approached the car, he saw defendant emerge from a nearby gangway. Defendant was walking toward Gallagher and looked right at him. Defendant grabbed at his right waistband and turned to walk away. Gallagher called out to defendant and defendant began to run. As defendant ran, he grabbed a handgun from his waistband and tossed the gun under a parked, unoccupied minivan. Gallagher was about 15 feet away from defendant when he saw defendant toss the gun under the minivan. Gallagher caught up with defendant, handcuffed him and placed him in a squad car. Gallagher retrieved a black semiautomatic handgun with 12 live rounds from under the minivan. He inventoried the gun. The State introduced a certified copy of defendant's earlier conviction for an felony offense, resisting a police officer.

¶ 9 Defendant testified on his own behalf and denied Gallagher's version of events. He stated that he was on the 6200 block of South Carpenter when Gallagher pulled over, and asked

him to stop and come over to his vehicle. Defendant spoke to Gallagher through the passenger side window. Gallagher asked him his name and where he was going. Defendant answered and told him that he was going to his mother's house. Gallagher asked defendant where his mother lived and if he had ever been arrested. When defendant answered that he had been arrested, Gallagher immediately told defendant to place his hands on the hood of the squad car, which defendant did. Defendant testified that Gallagher then searched him, placed him in handcuffs and put him in a squad car. Gallagher did not recover anything from defendant's person, but began searching the area. Defendant saw Gallagher grab something from near the vehicle next to the squad car, but defendant did not see what it was until he got back into the car. When he returned to the squad car, Gallagher had a gun, which defendant denied was his property. Gallagher then took defendant to the police station. At the police station, Gallagher gave the gun to another officer. Defendant was then processed in the police station.

¶ 10 After hearing the evidence, the trial court found defendant guilty of all three counts. This appeal followed.

¶ 11 ANALYSIS

¶ 12 Because whether we invalidate any of defendant's convictions on a constitutional basis will affect the application of the one-act, one-crime rule, we must first address the constitutional claims.

¶ 13 Defendant first contends that under *Aguilar*, his conviction for the first count of AUUW cannot stand. Defendant correctly notes that the *Aguilar* court found the underlying statute, section 24-1.6 (a)(1), (a)(3)(A) of the Code (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008)) violated the right to bear arms as protected by the second amendment. However, the defendant was sentenced as a Class 2 offender on that count under section 24-1.6(d)(2) of the Code (720

ILCS 5/24-1.6(d)(2) (West 2008)), due to his previous felony conviction. The State contends that his felon status takes the defendant outside the narrow scope of constitutionally-protected activities noted in *Aguilar*.

¶ 14 The *Aguilar* court itself indicated that it did not invalidate the Class 2 version of the offense in question. In its modified opinion on denial of rehearing, the court stated:

“In response to the State’s petition for rehearing in this case, 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. We make no finding, express or implied, with respect to the constitutionality or unconstitutionality of any other section or subsection of the AUUW statute.” *Aguilar*, 2013 IL 112116, ¶ 22 n.3.

Chief Justice Garman dissented from the denial of rehearing, concluding the supreme court would have benefitted from further deliberation because the State’s petition for rehearing had “fundamentally redefined” the issue in the case. See *Aguilar*, 2013 IL 112116, ¶¶ 33, 36 (Garman, C.J., dissenting). Justice Theis also dissented, observing in part “the implication of the court’s holding is that the so-called ‘Class 2 form of the offense,’ which enhances the penalty for felons, could potentially remain enforceable.” *Id.* ¶ 47 (Theis, J., dissenting).

¶ 15 Additionally, the main opinion in *Aguilar* specifically observed that felons’ rights to keep and bear arms could still be validly prohibited. *Id.* ¶ 21. The court quoted the United States Supreme Court’s recent pronouncement that valid gun regulations may include, but are not limited to, “‘longstanding prohibitions on the possession of firearms by felons and the mentally

ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’ ” (Emphasis added.) *Id.* ¶ 26 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008)). Indeed, the United States Supreme Court described such provisions as “presumptively lawful.” *Heller*, 554 U.S. at 627 n.26.

¶ 16 Based on this reasoning, this court has rejected second amendment challenges to other statutes restricting the possession or use of firearms by felons. See, e.g., *People v. Neely*, 2013 IL App (1st) 120043, ¶ 12 (upholding the UUWF statute); *People v. Garvin*, 2013 IL App (1st) 113095, ¶¶ 26-41 (upholding the armed habitual criminal and UUWF statutes); *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011) (same).

¶ 17 In *People v. Burns*, 2013 IL App (1st) 120929, this court rejected the precise Class 2-related claim which defendant makes here. The *Burns* court stated: “we conclude the possession of firearms by felons is conduct that falls outside the scope of the second amendment’s protection. In this case, the Class 2 form of AUUW at issue merely regulates the possession of a firearm by a person who has been previously convicted of a felony. Accordingly, defendant’s constitutional challenge to the Class 2 form of the offense in the AUUW statute fails.” *Id.* ¶ 27. Various panels in this judicial district have consistently followed *Burns*. *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 17; *People v. Soto*, 2014 IL App (1st) 121937, ¶¶ 10-14. We find the *Burns* court’s analysis to be persuasive and we adopt it as our own. Accordingly, we reject the defendant’s claim that *Aguilar* invalidates his conviction for Class 2 AUUW under the first charged count.

¶ 18 The defendant raises two constitutional challenges to his convictions under the second AUUW count, which alleged violation of a statute prohibiting persons under 21 years of age

from carrying handguns in public. In an opinion written by our late colleague Justice Patrick Quinn, this court rejected an identical claim. *People v. Henderson*, 2013 IL App (1st) 113294. Relying on the *Aguilar* court’s recognition that regulation of gun possession by young persons was permissible notwithstanding second amendment protections, the *Henderson* court stated:

“However, in *Aguilar*, the supreme court expressly agreed with the ‘obvious and undeniable’ conclusion of those courts, since *Heller*, which have undertaken a comprehensive historical examination of ‘presumptively lawful regulatory measures,’ *e.g.*, laws proscribing the carriage of firearms in sensitive places such as schools and government buildings, and cited with approval several cases, all of which concluded that the possession of handguns by minors is conduct that falls outside the second amendment’s core protection. [Citation.] We thus reject defendant’s contention that the public carriage of handguns by those under 21 is core conduct subject to second amendment protection.” *Id.* ¶ 30 (citing *Aguilar*, 2013 IL 112116, ¶¶ 26-27).

¶ 19 As with the defendant’s first issue, we find the analysis of another division of this court in an earlier case persuasive, and we find no reason to depart from it. Accordingly, we must reject his second constitutional claim.

¶ 20 The defendant’s third claim arises under the equal protection clause of the fourteenth amendment to the United States Constitution, as applied to the states, to the statute’s classification between those over and under 21 years of age. He claims that this classification impermissibly burdens the fundamental right to bear arms of those aged 18 to 20.

¶ 21 The constitutional right to equal protection of the laws requires the government to treat similarly situated persons in a similar manner. *People v. Warren*, 173 Ill. 2d 348, 361 (1996). The guarantee of equal protection “does not preclude the State from enacting legislation that draws distinctions between different categories of people, but it does prohibit the government from according different treatment to persons who have been placed by a statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation.” *Jacobson v. Department of Public Aid*, 171 Ill. 2d 314, 322 (1996). Laws enjoy a strong presumption of constitutionality, and we are required to uphold the constitutionality of a statute whenever reasonably possible. *People v. Alcozer*, 241 Ill. 2d 248, 259 (2011). The party challenging the constitutionality of the statute has the burden to prove its invalidity. *Id.*

¶ 22 To ensure that the State has not exercised its power to classify arbitrarily, courts analyze legislation under equal protection by applying different levels of scrutiny depending on the statutory classification involved. *Id.* at 323. Age-based classifications are generally reviewed under the rational basis standard, because courts have routinely held that age is not a suspect class for purposes of equal protection analysis. See *People v. M.A.*, 124 Ill. 2d 135, 140 (1988).

¶ 23 Defendant, however, argues that the age restriction impinges upon a fundamental right, the right to keep and bear arms in self-defense, and is therefore subject to strict scrutiny. Fundamental rights are those which “lie at the heart of the relationship between the individual and a republican form of nationally integrated government.” *People ex rel. Tucker v. Kotsos*, 68 Ill. 2d 88, 97 (1977). In upholding a law-abiding citizen’s right to possess an operable handgun “in defense of hearth and home,” the Supreme Court cautioned that the second amendment’s guarantee of an individual right to possess and carry weapons in case of confrontation, like the first amendment’s right of free speech, is not unlimited. *Heller*, 554 U.S. at 592, 595, 635. The

Heller court did “not read the second amendment to protect the right of citizens to carry arms for any sort of confrontation.” (Emphasis in original.) *Id.* at 595. The right to keep and bear arms is not “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626.

¶ 24 This court has rejected the contention that the public carriage of handguns by those under 21 is conduct “at the core” of second amendment rights and therefore subject to strict scrutiny. See *Henderson*, 2013 IL App (1st) 113294, ¶ 30. Many other courts have found likewise. See, e.g., *National Rifle Ass’n of America, Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 195, 204 (5th Cir. 2012) (finding restrictions on the ability of persons under 21 to purchase handguns were firmly historically rooted, that the age of majority at common law was 21, and it was not until the 1970s that states enacted legislation to lower the age of majority to 18); *United States v. Rene E.*, 583 F.3d 8, 16 (1st Cir. 2009) (finding that the right to keep arms in the founding period did not extend to juveniles); *Powell v. Tompkins*, 926 F. Supp. 2d 367, 387-90 (D. Mass. 2013) (holding a Massachusetts law that proscribed the carrying of firearms by persons under the age of 21 did not violate the second amendment)); *Baril v. Baril*, 354 A.2d 392, 396 (Me. 1976) (stating that the “English common law doctrine of majority of twenty-one years [was] recognized and enforced by the colonists”). In addition, the statute does not impose a lifetime ban; its severity is diminished because affected 18-to-20-year-old adults “will soon grow up and out of its reach.” *National Rifle Ass’n of America*, 700 F.3d at 207.

¶ 25 In *People v. Garvin*, 2013 IL App (1st) 113095, ¶ 35, the court held that while strict scrutiny applied to “core” second amendment protections, intermediate scrutiny applied to

regulation “closer to the margins.” Accord *Henderson*, 2013 IL App (1st) 113294, ¶ 30. Based on this authority, we will apply intermediate scrutiny here.

¶ 26 Intermediate scrutiny requires the government to demonstrate that the regulation is substantially related to an important governmental interest. *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 308 (2008). Governments have the inherent and lawful power to restrain private rights as necessary and appropriate to promote society’s health, comfort, safety and welfare even though the prohibitions invade an individual’s right of liberty. *Id.* at 310. The fit between the challenged regulation and the governmental interest need not be perfect. *U.S. v. Marzzarella*, 614 F.3d 85, 97 (3d Cir. 2010).

¶ 27 We first consider whether the age restriction serves an important governmental interest. In *People v. Marin*, 342 Ill. App. 3d 716, 723-24 (2003), this court looked at the history and language of the AUUW statute and determined that its purpose was to protect the public and police officers from the inherent dangers and threats to safety posed by any person carrying in public a loaded and immediately accessible firearm on his person or in his vehicle. In particular, the statute intended to “prevent situations where no criminal intent existed, but criminal conduct resulted despite the lack of intent, *e.g.*, accidents with loaded guns on public streets or the escalation of minor public altercations into gun battles or *** the danger of a police officer stopping a car with a loaded weapon on the passenger seat.” *Id.* at 727. Even innocent motivations could be transformed “into culpable conduct because of the accessibility of weapons as an outlet for subsequently kindled aggression.” *Id.* Promoting and ensuring the safety of both the general public and police officers by limiting the accessibility of firearms in public to a less responsible or less mature group of people is unquestionably a substantial or important interest. Youths in the 18-to-20-year-old age group are more likely to directly interact with and, thus,

endanger, children under 18 years of age. We find that the age restriction serves a substantial and important government interest to reduce armed violence and illegal activity of street gangs and others, by preventing those under 21 years of age from carrying handguns in public. We so find even though the connection is arguably imperfect. Accordingly, the age restriction does not violate the equal protection clause.

¶ 28 Having determined that none of defendant's convictions are constitutionally infirm, we must consider how the one-act, one-crime rule affects them. On appeal, defendant argues, and the State concedes, that he was found in possession of a single gun, and therefore can only be convicted on one count of AUUW. Both sides also agree that one of the convictions for AUUW and the conviction for UUWF must be vacated, because the one-act, one-crime rule prohibits multiple convictions arising out of a single physical act. *People v. King*, 66 Ill. 2d 551, 566 (1977). We therefore vacate one of the two AUUW convictions, and also vacate the UUWF conviction because the latter is for a less serious offense. *People v. Garcia*, 179 Ill. 2d 55, 71 (1997) (under the one-act, one-crime rule, a sentence should be imposed on the more serious offense and the conviction on the less serious offense should be vacated); see also *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 29 CONCLUSION

¶ 30 We affirm the judgment of the circuit court, but vacate one of defendant's two AUUW convictions, and vacate his conviction for UUWF. Pursuant to our authority under Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1)), we correct the mittimus accordingly.

¶ 31 Affirmed in part and vacated in part; mittimus corrected.