

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:** We vacate one of defendant’s convictions for aggravated unlawful use of a weapon based on the supreme court’s recent opinion in *People v. Burns*, 2015 IL 117387. However, we affirm his other conviction for aggravated unlawful use of a weapon based on his being under 21 years of age, as we reject defendant’s claims that the age restriction violated rights granted him by the second amendment and the equal protection clause of the fourteenth amendment. We vacate defendant’s remaining conviction for unlawful use of a weapon by a felon under the one-act, one-crime rule.

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

¶ 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 (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 AUUW 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 defendant to four years' imprisonment on each count, to be served concurrently. In 2012, we rejected his claim that the AUUW law 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 (*Lawrence I*).

¶ 4 Lawrence appealed to the Illinois Supreme Court. That court denied defendant's petition, 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). Upon reconsideration, we vacated our order in *Lawrence I*, but concluded that the ultimate result we reached in 2012 was correct. *People v. Lawrence*, 2014 IL App (1st) 111173-UB (*Lawrence II*). In *Lawrence II*, we found that defendant's convictions for AUUW

violated neither defendant's second amendment nor his equal protection rights. However, as before, we determined that the three convictions for the same act violated the one-act, one-crime rule. We invoked the rule holding that the conviction for the most serious offense should stand when the one-act, one-crime rule applies. Upon determining that UUWF was a less serious offense than AUUW, we vacated defendant's conviction for that offense. *Id.* ¶ 28. We also vacated one of defendant's two remaining convictions for AUUW (without specifying which one), leaving him convicted of one charge of AUUW. *Id.*

¶ 5 Defendant then filed a second petition for leave to appeal. The supreme court denied that petition, but again entered a supervisory order, this time directing us to vacate our earlier order and reconsider our judgment in light of *People v. Burns*, 2015 IL 117387. *People v. Lawrence*, No. 118192 (Feb. 24, 2016). We have vacated our order in *Lawrence II* and now issue this judgment addressing the issues presented in light of *Burns*.

¶ 6 BACKGROUND

¶ 7 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 South 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 the felony offense of resisting a police officer.

¶ 8 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.

¶ 9 After hearing this evidence, the trial court found defendant guilty of all three counts. His appeal to this court commenced the sequence of appeals detailed above.

¶ 10 ANALYSIS

¶ 11 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 defendant's constitutional claims.

¶ 12 In *Burns*, our supreme court considered a challenge to section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute which prohibited carrying a concealed, uncased, and loaded handgun outside the home. The court held the provision was facially unconstitutional, because it impermissibly infringed on rights granted by the second amendment to the United States constitution. *Burns*, 2015 IL 117387, ¶ 25. The court stated that law was facially invalid and that it was “not enforceable against anyone.” *Id.* ¶ 32. This invalidity included even felons who were subject to an elevated penalty under subsection (d) of the law. *Id.* ¶ 25. Accordingly, we vacate defendant’s conviction and sentence for AUUW under 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)).

¶ 13 The defendant raises two constitutional challenges to his convictions under the second AUUW count. That count alleged that he violated 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)). That law prohibits persons under 21 from carrying handguns outside the home.

¶ 14 The defendant first argues that the age restriction violates rights guaranteed under the second amendment to the United States constitution. However, since we issued our order in *Lawrence II*, our supreme court rejected an identical claim. In *People v. Mosley*, 2015 IL 115872, the court considered a 19-year-old defendant’s facial challenge to several handgun laws, including section 24-1.6 (a)(1), (a)(3)(I), which is at issue here. Mosley contended that the section “unconstitutionally disarm[ed] young adults who are 18 to 20 years old in violation of the second amendment.” *Id.* ¶ 33. The court rejected his challenge, relying in large part on *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 30, which explained why the carriage of firearms by those of such young age was not “core conduct” protected by the second amendment. Based in large part on the *Henderson* court’s persuasive analysis, the *Mosley* court found that “the

restriction on persons under the age of 21 *** is both historically rooted and not a core conduct subject to second amendment protection.” *Mosley*, 2015 IL 115872, ¶ 37. Accordingly, we must reject defendant’s second amendment challenge to the AUUW charge under section 24-1.6(a)(1), (a)(3)(I).

¶ 15 The defendant’s second challenge to this charge arises under the equal protection clause of the fourteenth amendment to the United States Constitution, as applied to the states. He argues that the statute impermissibly burdens the fundamental right to bear arms of those aged 18 to 20, as compared to older individuals.

¶ 16 Again, we find *Mosley* to be controlling. The *Mosley* court rejected the same challenge, finding that “an extensive relationship exists between reasonable restrictions on the use of firearms by persons under the age of 21 and the state’s interest in protecting the public and police.” *Id.* ¶ 42. The court found that the defendant had not shown that section 24-1.6 (a)(1), (a)(3)(I) did “not rationally relate to a legitimate government interest.” *Id.* Having found a justifiable basis for the age classification, our supreme court rejected the defendant’s equal protection challenge to the law at issue here.

¶ 17 The defendant does not raise any constitutional challenge to his UUWF conviction. Since we have rejected defendant’s challenge to one of the two AUUW charges, we must consider how the one-act, one-crime rule affects the two remaining charges. In their original briefs in this court, defendant argued, and the State conceded, that because defendant was found in possession of a single gun, he could only be convicted on one count 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). Of the two remaining charges, we vacate the UUWF conviction because it is for a less serious offense than AUUW. *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).

¶ 18

CONCLUSION

¶ 19 We vacate defendant's conviction for AUUW under section 24-1.6 (a)(1), (a)(3)(A) and his conviction for UUWF. We affirm his conviction for AUUW under section 24-1.6 (a)(1), (a)(3)(I). Because the sentences for the convictions on each of the three counts were identical and ran concurrently, no remand for resentencing is necessary. Pursuant to our authority under Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1)), we correct the mittimus accordingly.

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