SIXTH DIVISION
JUNE 29, 2012

No. 1-11-1179

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 11071
	)	
MARK BOURDEAU,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Garcia and Palmer concurred in the judgment.

ORDER

¶ 1 *Held:* We hold that the aggravated unlawful use of a weapon statute does not violate the right-to-bear-arms clauses found in both the U.S. and Illinois constitutions.

¶ 2 On May 15, 2010, defendant, Mark Bourdeau, attended a gang funeral. Police were conducting surveillance there, when they witnessed defendant handling a firearm and arrested him for aggravated unlawful use of a weapon (AUUW). 720 ILCS 5/24-1.6 (West 2010). On March 9, 2011, defendant pled guilty to one count of AUUW and was sentenced to 18 months probation.

¶ 3 On this direct appeal, defendant claims that the AUUW statute violates both: (1) the second amendment to the federal constitution (U.S. Const., amend. II), and (2) the Illinois Constitution. Ill. Const. 1970, art. I, § 22. Defendant raises both facial and as-applied challenges.

¶ 4 We have reviewed the exact same issues several times before and found no constitutional violations. *People v. Montyce*, 2011 IL App (1st) 101788; *People v. Mimes*, 2011 IL App (1st) 082747; *People v. Ross*, 407 Ill. App. 3d 931 (2011); *People v. Aguilar*, 408 Ill. App. 3d 136 (2011); *People v. Dawson*, 403 Ill. App. 3d 499 (2010). For the same reasons, stated below, we find that defendant's constitutional rights were not violated and affirm his conviction.

¶ 5 BACKGROUND

¶ 6 In sum, undercover officers were conducting surveillance at a gang-related funeral when they observed defendant handling a gun while conversing with three or four others in the funeral home's parking lot. After defendant entered his vehicle, police detained defendant, searched the vehicle, and recovered a handgun. Defendant was then arrested for AUUW.

¶ 7 I. Information

¶ 8 On June 18, 2010, the State filed an information charging four counts of AUUW. Specifically, it alleged that on May 15, 2010: (1) defendant knowingly carried a firearm not on his own land or in his own abode or fixed place of business, and the firearm possessed was uncased, loaded and immediately accessible; (2) defendant knowingly carried a firearm not on his own land or in his own abode or fixed place of business, and a valid firearm owner's identification card had not been issued; (3) defendant knowingly carried a firearm on a public

street, and the firearm was uncased, loaded, and immediately accessible; and (4) defendant knowingly carried a firearm on a public street, and a valid firearm owner's identification card had not been issued.

¶ 9 II. Pretrial Proceedings

¶ 10 On August 4, 2010, defendant filed two pretrial motions: a motion to suppress evidence; and a motion to quash arrest. Defendant sought suppression of the firearm on the ground that the search was executed without a warrant or probable cause. Defendant moved to quash the arrest arguing that, if the fruits of the illegal search were suppressed, then the police also lacked probable cause to arrest. After a suppression hearing on October 25, 2010, the trial court held that the search was not unreasonable and thus the officers also had probable cause to arrest.

¶ 11 At the suppression hearing, two witnesses testified. The defendant testified on his own behalf. The State called Officer Emmit McClendon of the Chicago police department, the arresting officer.

¶ 12 Defendant testified that, on the evening of May 15, 2010, he had driven to a funeral home with two passengers in his vehicle: Mariah Campbell, the sister of the deceased, and a male named Steve. Defendant could not remember Steve's last name. Defendant parked in the funeral home's parking lot, and backed his two-door vehicle into a parking spot with the passenger's door facing Western Avenue and the driver's door facing an alley. Defendant testified that a black truck was parked next to his vehicle blocking the view of his passenger's door as seen from Western Avenue.

¶ 13 Defendant testified that, after the funeral service ended, the attendees exited and gathered

in front of the funeral home and in the parking lot. Defendant estimated that between 50 and 80 people gathered in these areas. While people were mingling, he went to smoke a cigarette in his vehicle. He was sitting in the front passenger seat with the door all the way open. While smoking a cigarette, defendant witnessed individuals whom he believed to be undercover police officers, dressed in black vests, shirts, and visible side arms, searching people in the parking lot.

¶ 14 Defendant testified that the police then approached his vehicle with guns drawn. They asked him to exit the vehicle, and he complied. He was handcuffed and placed standing by the rear of his vehicle. The police then searched his vehicle. However, they never asked for defendant's permission.

¶ 15 Defendant testified that the police recovered a pistol after three to four minutes of searching. Defendant stated that he had never seen the firearm before the day of the funeral. He was also uncertain where exactly the police found the weapon. Defendant testified that he later learned of the weapon's hiding place only after he retrieved his vehicle from the pound and searched the vehicle's interior. Defendant found his center console ripped up, and he assumed that was the compartment where the weapon was hidden. The defense then rested.

¶ 16 The State then called Officer Emmit McClendon on behalf of the State. The officer testified that he had been an officer with the Chicago police department for 17 years. He explained that, on the evening of May 15, 2010, he was assigned to conduct surveillance at a gang funeral at 5024 South Western Avenue. Officer McClendon testified that, among his team of three other officers, he was the undercover officer. The team of officers were present at this location for fear of violence and retaliation between gangs.

¶ 17 The officer testified that he parked his vehicle on Western Avenue facing south, right by the entrance of the funeral home. Officer McClendon then testified that he observed a man, later identified as defendant, converse with three or four other men on the sidewalk. Officer McClendon observed the conversation from a distance of about 10 to 12 feet. During this conversation, the officer observed defendant retrieve and replace a shiny object from his back pocket. When defendant replaced the shiny object into his back pocket, Officer McClendon observed the object as a handgun. He immediately notified his team of defendant's description via radio transmission. Officer McClendon then observed defendant walk back to his vehicle and sit in the driver's seat with the door open. Defendant then moved towards the center console. At this point Officer J. Luna detained defendant and Officer M. A. Reno searched the vehicle and found the handgun.[1] Officer McClendon did not recall how many people were in front of the funeral home or in the adjacent parking lot. In contrast to defendant's testimony, Officer McClendon testified that he was certain that a black truck was not parked next to defendant's vehicle.

¶ 18 During closing arguments, defense counsel stated that there was a credibility contest between defendant and Officer McClendon. Defense counsel argued that because defendant's testimony was not impeached, and was more detailed than the officer's, it should be viewed as more credible. Counsel argued that the discrepancies with respect to how defendant's vehicle was parked, whether there was an adjacent black truck, and how many people were standing around after the funeral should all be viewed in defendant's favor. However, the trial court

[1] The first names of both Officers Luna and Reno were not included in the record.

found Officer McClendon's testimony to be more credible, denied the motion to suppress evidence, and thus found the subsequent arrest to be lawful.

¶ 19 The trial court found that the discrepancies in testimony were insignificant. The trial court observed that, even if defendant never retired to his vehicle, the officers would still have had probable cause to search defendant's person because Officer McClendon had observed the weapon before defendant approached his vehicle. The trial court concluded that the handgun would have been discovered regardless of when the search commenced. The trial court also explained that, given the circumstances of the funeral and the potential for gang violence and retaliation, approaching defendant with weapons drawn was a reasonable safety precaution.

¶ 20 III. Conviction and Sentencing

¶ 21 On March 9, 2011, defendant's counsel requested a 402 conference. Ill. S. Ct. R. 402(d) (eff. Jul. 1, 1997). On the record, the trial court stated that, if defendant pled guilty to the first count of aggravated unlawful use of a weapon, the remaining three counts would be dismissed, and 18 months probation would be an appropriate sentence. The trial court reviewed defendant's prior criminal record of four misdemeanors.[2] The parties stipulated that the testimony heard at the suppression hearing and Officer McClendon's police report were sufficient to establish a

[2] Defendant's first charge, for possession of cannabis, was stricken from the docket with leave to reinstate. On defendant's second charge, also for cannabis possession, defendant was sentenced to six months of court supervision. On the third charge, for aggravated assault of a police officer or sheriff, defendant was sentenced to six months conditional discharge. His final charge, for failing to register for a firearm, resulted in a nonsuit.

factual basis for the first count of aggravated unlawful use of a weapon.

¶ 22 Defendant pled guilty on March 9 to count I, for knowingly possessing a firearm not on his own land or in his own abode or business. 720 ILCS 5/24-1.6(a) (West 2010). He was sentenced to 18 months probation. Defendant did not file any posttrial motions. Defendant filed a notice of appeal on April 8, 2011, and this appeal followed.

¶ 23 ANALYSIS

¶ 24 On this direct appeal, defendant raises both facial and as-applied constitutional challenges to the AUUW statute. Defendant claims that the AUUW statute is unconstitutional because it infringes on an individual's right to bear arms for self-defense.[3] Defendant argues (1) that, the second amendment of the federal constitution protects the right to bear arms outside of the home, (U.S. Const., amend. II), and (2) that the Illinois Constitution separately and independently protects the right to keep and bear arms. Ill. Const. 1970, art. I, § 22. For the following reasons, we do not find defendant's arguments persuasive and affirm his conviction.

¶ 25 I. Standard of Review

¶ 26 A defendant "may challenge the constitutionality of a statute at any time." *People v. Wagener*, 196 Ill. 2d 269, 279 (2001). The question of a statute's constitutionality is reviewed *de novo*. *People ex rel Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009); *People v. Jones*, 223 Ill. 2d 569, 596 (2006); *People v. Cornelius*, 213 Ill. 2d 178, 188 (2004). *De novo* consideration means

[3] This same claim is currently pending before the Illinois Supreme Court in *People v. Aguilar*, 2012 IL 112116. The supreme court granted the petition for leave to appeal our decision in *People v. Aguilar*, 408 Ill. App. 3d 136 (2011).

we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011).

¶ 27 Statutes are presumed to be constitutional. *Chicago Allis Manufacturing Corp. v. Metropolitan Sanitary District of Greater Chicago*, 52 Ill. 2d 320, 327 (1972); *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 976 (1999) (citing *City of Chicago Heights v. Public Service Co. of Northern Illinois*, 408 Ill. 604, 609 (1951)); and the challenging party has the burden of establishing a clear constitutional violation. See *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20; *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 290 (2003). A court will affirm the constitutionality of a statute if it is "reasonably capable of such a determination" and "will resolve any doubt as to the statute's construction in favor of its validity." *One 1998 GMC*, 2011 IL 110236, ¶ 20 (citing *People v. Johnson*, 225 Ill. 2d 573, 584 (2007), and *People v. Boeckmann*, 238 Ill. 2d 1, 6-7 (2010)). See also *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 28 II. Facial and As-Applied Constitutional Challenges

¶ 29 In this appeal, defendant raises both facial and as-applied challenges.

¶ 30 In a facial challenge, a court examines whether the statute at issue contains "an inescapable flaw that renders the *** statute unconstitutional under *every* circumstance." (Emphasis added.) *People v. One 1998 GMC*, 2011 IL 110236, ¶ 58. "[A] challenge to the facial validity of a statute is the most difficult challenge to mount successfully because an enactment is invalid on its face only if no set of circumstances exists under which it would be valid." *One 1998 GMC*, 2011 IL 110236, ¶ 20 (citing *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 305-06 (2008)); see also *In re M.T.*, 221 Ill. 2d 517, 537 (2006) ("Successfully making a facial

challenge to a statute's constitutionality is extremely difficult, requiring a showing that the statute would be invalid under *any* imaginable set of circumstances." (Emphasis in original.)). Since a successful facial challenge will void the statute for all parties in all contexts, " '[f]acial invalidation "is, manifestly, strong medicine" that "has been employed by the court sparingly and only as a last resort." ' " *Poo-bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009) (quoting *National Endowment for the Arts v. Finley*, 524 U.S. 569, 580 (1998), quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973)).

¶ 31 "The invalidity of the statute in one particular set of circumstances is insufficient to prove its facial invalidity." *In re M.T.*, 221 Ill. 2d at 536-37. " ' "[S]o long as there exists a situation in which a statute could be validly applied, a facial challenge must fail." ' " *In re M.T.*, 221 Ill. 2d at 537 (quoting *People v. Huddleston*, 212 Ill. 2d 107, 145 (2004), quoting *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002)).

¶ 32 By contrast, in an as-applied challenge, "a plaintiff protests against how an enactment was applied in the particular context in which the plaintiff acted or proposed to act, and the facts surrounding the plaintiff's particular circumstances become relevant." *Napleton*, 229 Ill. 2d at 306. In short, an as-applied challenge "requires a party to show that the statute violates the constitution as the statute applies to him." *People v. Brady*, 369 Ill. App. 3d 836, 847 (2007) (citing *People v. Garvin*, 219 Ill. 2d 104, 117 (2006)).

¶ 33 Whether a challenge is a facial or an as-applied challenge affects the scope of our review because the facts of a party's case become relevant only if he or she brings an as-applied challenge. See *Byrd v. Hamer*, 408 Ill. App. 3d 467, 487-88 (2011). As noted, in an as-applied

challenge, the challenging party contests only how the statute or ordinance was applied against him within a particular context, and, as a result, the facts of his particular case become relevant. *Napleton*, 229 Ill. 2d at 306. By contrast, where the challenging party has chosen to mount only a facial challenge, the facts of his particular case do not affect our review.

¶ 34 The type of challenge also affects the remedy available to a prevailing party. "[I]f a plaintiff prevails in an as-applied claim, he may enjoin the objectionable enforcement of a statute only against himself, while a successful facial challenge voids enactment in its entirety and in all applications." *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 498 (2008) (citing *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 306 (2008)). Where a statute is constitutional as-applied to a party, a facial challenge will also fail, since there is necessarily at least one circumstance in which the statute is constitutional. *Horvath v. White*, 358 Ill. App. 3d 844, 854 (2005); see also *Freed v. Ryan*, 301 Ill. App. 3d 952, 958 (1998).

¶ 35 III. Second Amendment to the United States Constitution

¶ 36 Defendant argues that the AUUW statute violates the second amendment. Defendant pled guilty to the portion of the AUUW statute, which provides:

> "(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; [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." 720 ILCS 5/24-1.6(a)(1), (3) (West 2010).

¶ 37 Defendant argues that the second amendment protects his right to keep a firearm on his person either in or out of his home for the purpose of self-defense. The second amendment provides: "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 the last few years, the United States Supreme Court has issued two significant decisions concerning the second amendment: (1) *District of Columbia v. Heller*, 554 U.S. 570 (2008); and (2) *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3026 (2010). Defendant cites both cases as support for his claims. He argues that *Heller* and *McDonald* protect his right to carry a firearm outside the home and that their holdings render the AUUW statute unconstitutional.

¶ 38 Defendant further argues that the Illinois constitution article I, section 22 protects his right to carry a firearm outside of the home. He asks us, in light of *Heller* and *McDonald*, to depart from our state's supreme court decision in *Kalodimos v. Morton Grove*, 103 Ill. 2d 483, 498 (1984), which held that a reasonable prohibition of handguns is constitutional. For the reasons discussed below, we do not find defendant's arguments persuasive.

¶ 39 A. Facial Challenge

¶ 40 As noted above, defendant relies primarily on two recent United States Supreme Court cases: *Heller* and *McDonald*. The United States Supreme Court found in *Heller* that the second amendment permitted an individual to keep a handgun in his or her home for the purpose of self-defense, and it struck down the District of Columbia law that had banned this. *Aguilar*, 408 Ill. App. 3d at 137 (citing *Heller*, 554 U.S. 570). Two years later, in *McDonald*, the Court held that its holding in *Heller* was not limited to the federal District of Columbia but also applied with equal force to the States. *Aguilar*, 408 Ill. App. 3d at 137 (citing *Heller*, 554 U.S. 570).

¶ 41 Specifically, in *Heller*, a District of Columbia police officer, who was authorized to carry a handgun while on duty, applied to register a handgun to keep in his home in the District, and the District refused his application. *Heller*, 554 U.S. at 575-76. The police officer then filed suit in federal court seeking to overturn the District's ban against the registration of handguns, but only in so far as it prohibited him from keeping a handgun in his home. *Heller*, 554 U.S. at 575-76. Before the United States Supreme Court, the District argued that the second amendment protected only the right to keep a firearm in connection with militia service. *Heller*, 554 U.S. at 577. In contrast, the police officer argued that the second amendment also protected the right of an individual, such as himself, to keep a firearm in his home for the purpose of self-defense. *Heller*, 554 U.S. at 577.

¶ 42 In a close 5 to 4 decision, the United States Supreme Court agreed with the officer and protected his right to keep a firearm in his home. *Heller*, 554 U.S. at 636. The *Heller* court held that the second amendment protects only the "rights of law abiding, responsible citizens to use

arms in defense of hearth and home." *Heller*, 554 U.S. at 635.

¶ 43 Two years later in *McDonald*, defendants City of Chicago and the village of Oak Park, which had laws similar to the District law struck down in *Heller*, tried to distinguish their case by arguing that, although the second amendment applied in the federal District, it had no application to the states. *McDonald*, 130 S. Ct. at 3026. The United States Supreme Court rejected this argument and held in *McDonald* that the holding in *Heller* was fully applicable to the states. *McDonald*, 130 S. Ct. at 3050. The Court ended with: "We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." *McDonald*, 130 S. Ct. at 3050.

¶ 44 In the case at bar, defendant relies on these recent United States Supreme Court cases to argue that a ban on loaded handguns outside of one's home violates the second amendment. The Illinois Appellate Court has rejected this argument several times before in published opinions. *Montyce*, 2011 IL App (1st) 101788; *People v. Mimes*, 2011 IL App (1st) 082747; *Ross*, 407 Ill. App. 3d 931 (2011); *Aguilar*, 408 Ill. App. 3d 136 (2011); *Dawson*, 403 Ill. App. 3d 499 (2010). For example, in *Aguilar*, we found that "the decisions in *Heller* and *McDonald* were limited to interpreting the second amendment's protection of the right to possess handguns in the home, *not the right to possess handguns outside the home*." (Emphasis added.) *Aguilar*, 408 Ill. App. 3d 136, 143 (2011). Again in *Dawson*, we stated "the *Heller* Court ultimately limited its holding to the question presented—that the second amendment right to bear arms protected the right to possess a commonly used firearm *** in the home for self-defense purposes." *Dawson*, 403 Ill. App. 3d 499, 508 (2010) (citing *Heller*, 554 U.S. at 598-99). And again in *Ross*, 407 Ill.

App. 3d 931 (2011), we held: "*Heller* applies only to the question presented—that the second amendment right to bear arms protected the right to possess a handgun in the home for self-defense purposes." *Ross*, 407 Ill. App. 3d at 939-40 (citing *Heller*, 554 U.S. at 598-99).

¶ 45 To succeed in his facial challenge of the portion of the AUUW statute to which he pled guilty, defendant must prove that no situation exists in which the law can be validly applied. As this court has stated before:

> "Contrary to defendant's assertion that [this portion of] the AUUW imposes a 'blanket prohibition' on carrying firearms outside the home, the statute is limited to preventing the carrying of loaded, uncased and accessible firearms in public on the street. *** Nevertheless, the prohibition is justified by the potential deadly consequences to innocent members of the general public when someone carrying a loaded and accessible gun is either mistaken about his [or her] need for self-defense or just a poor shot."
> *Mimes*, 2011 IL App (1st) 082747, ¶ 79.

Defendant argues that the requirement of carrying his firearm unloaded and/or cased is a violation of his right to bear arms for self-defense because the firearm is not immediately accessible. 720 ILCS 5/24-1.6(a)(3)(A) (West 2010). He relies on *Nunn v. State*, 1 Ga. 243, 249 (1846) to explain that such a prohibition renders the firearm "wholly useless for the purpose of defen[s]e." *Nunn v. State*, 1 Ga. 243, 249 (1846). See also *State v. Reid*, 1 Ala. 612, 616-17 (1840). However, *Nunn* held that "carrying a concealed weapon could be prohibited so long as

its citizens had an opportunity to carry a weapon in some manner." *Nunn*, 1 Ga. at 251. Thus, neither *Nunn*, nor *Reid*, supports defendant's argument.

¶ 46 B. As-Applied Challenge

¶ 47 The State urges us to find that defendant waived his as-applied constitutional challenge. The State argues that, since defendant did not file a motion to withdraw his guilty plea, he waived his as-applied challenge. *People v. Wilk*, 124 Ill. 2d 93, 106-07 (1988). The State contends that, since defendant failed to litigate the issue in the trial court, the argument cannot be raised in this court. Lastly, the State asserts that, since there was no trial, evidentiary hearing, or finding of facts addressing the as-applied second amendment challenge, the record lacks the proper foundation to litigate the challenge on appeal.

¶ 48 We find that the as-applied challenge was waived. Since there was no trial, evidentiary hearing, or finding of facts, there are simply no facts on which defendant can base an as-applied challenge. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 228 (2010); *Desnick v. Department of Professional Regulation*, 171 Ill. 2d 510, 555-56 (1996); *Reno v. Flores*, 113 S. Ct. 1439, 1446 (1993). We are not a fact-finding court but a court of review.

¶ 49 C. Article I, section 22 of the Illinois Constitution

¶ 50 Finally, defendant claims that the AUUW statute also violates the section of the Illinois Constitution which, like the second amendment of the federal constitution, protects the right to bear arms. The Illinois Constitution provides: "Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be in-fringed." Ill. Const. 1970, art. I, § 22. It is important to note that this "section does not mirror the second amendment to the federal

constitution (U.S. Const., amend. II); rather it adds the words '[s]ubject only to the police power,' omits prefatory language concerning the importance of a militia, and substitutes 'the individual citizen' for 'the people.' " *Kalodimos*, 103 Ill. 2d at 491.

¶ 51 Defendant asks us to ignore our supreme court's decision in *Kalodimos*, and find that it conflicts with the United States Supreme Court precedent in *Heller* and *McDonald*. *Kalodimos* held that an ordinance in Morton Grove prohibiting possession of handguns, with some exceptions, was a constitutional exercise of home rule powers. As we have stated before, "only our supreme court may change its holding: 'The appellate court lacks authority to overrule decisions of this court which are binding on all lower courts.'" *Aguilar*, 408 Ill. App. 3d at 150 (quoting *People v. Artis*, 232 Ill. 2d 156, 164 (2009)). "Accordingly, we must decline defendant's invitation to 'revisit' *Kalodimos*." *Aguilar*, 408 Ill. App. 3d at 150 (citing *Wilson v. Cook County*, 394 Ill. App. 3d 534, 544 (2009)). We are bound by *Kalodimos* to find the AUUW statute constitutional.

¶ 52 IV. Conclusion

¶ 53 For the reasons noted above, this court finds that the AUUW statute does not violate either the second amendment to the federal constitution or section 22 of article I of the Illinois Constitution. In addition, we find that defendant has waived his as-applied claim. Thus, we affirm defendant's conviction.

¶ 54 Affirmed.