

SECOND DIVISION  
February 17, 2015

No. 1-13-2208

**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
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 17207
	)	
RUBEN PINEDA,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Justices Neville and Pierce concurred in the judgment.

**O R D E R**

- ¶ 1 **Held:** Defendant's conviction of the Class 2 offense of aggravated unlawful use of a weapon affirmed over his challenge to the constitutionality of the statute.
- ¶ 2 Following a bench trial, defendant Ruben Pineda was found guilty of aggravated unlawful use of a weapon (AUUW), a Class 2 offense, based on his prior felony conviction, then sentenced, as a Class X offender, to eight years in prison. On appeal, defendant challenges the constitutionality of the AUUW statute and requests this court to reverse his conviction.
- ¶ 3 The record shows that on October 5, 2011, defendant was arrested and charged by

indictment with count 1, unlawful possession of a firearm by a street gang member (720 ILCS 5/24-1.8(a)(1) (West 2010)); count 2, AUUW for possessing an uncased, loaded and immediately accessible firearm on a public way (720 ILCS 5/24-1.6(a)(1)/(3)(A) (West 2010)); count 3, AUUW for possessing a firearm on a public way without a valid FOID card (720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2010)); count 4, unlawful use or possession of a weapon by a felon (UUF) for carrying a firearm as a felon (720 ILCS 5/24-1.1(a)(West 2010)); and count 5, UUF for carrying ammunition as a felon (720 ILCS 5/24-1.1(a)(West 2010)). Both AUUW counts were charged as Class 2 offenses, based on defendant's prior felony conviction for aggravated driving under the influence.

¶ 4 At trial, Chicago police officer Colon testified that he and his partner were on routine patrol on the evening in question, when they noticed defendant standing outside a laundromat and drinking a beer, which he held in his right hand. As they drove their unmarked squad car closer to him, Officer Colon saw a black metallic object in defendant's left hand, which looked like a semi-automatic handgun. As the officers exited their car and approached defendant, he immediately dropped the object into the laundry cart next to him. Officer Colon stated that no one else was present at the scene, and that he and his partner took defendant into custody, and recovered a loaded, semi-automatic handgun from the cart.

¶ 5 The State introduced a certified copy of defendant's prior conviction for aggravated driving under the influence, and a certification from the Illinois State Police Department indicating that defendant had never been issued a FOID card.

¶ 6 Defendant testified that he was standing outside a laundromat with a friend and drinking a beer while waiting for his laundry to finish, when two police officers arrived, exited their

vehicle, and searched them. The officers did not find anything on their persons, but found a gun in defendant's laundry cart. Defendant denied ownership or knowledge of the gun, but was arrested and taken to the police station. Defendant testified that he had a cane in his left hand at the time the incident took place.

¶ 7 Following the close of argument, the trial court found defendant not guilty of unlawful possession of a firearm by a street gang member and guilty of count 2, the Class 2 offense of AUUW. The court then merged the remaining AUUW and UUF counts with count 2, and, based on his criminal background, sentenced defendant as a Class X offender to eight years in prison.

¶ 8 On appeal, defendant contests the constitutionality of the statute under which he was convicted. Our review is *de novo*. *People v. Neely*, 2013 IL App (1st) 120043, ¶ 8.

¶ 9 Defendant specifically claims that his AUUW conviction must be reversed in light of *People v. Aguilar*, 2013 IL 112116, where the supreme court held that the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) of the AUUW statute facially violates the right to keep and bear arms, as guaranteed by the second amendment to the United States Constitution. *Id.* at ¶ 22. He maintains that the Class 2 version of AUUW of which he was convicted, cannot be severed from the rest of the statute, and that it is unconstitutional on its face.

¶ 10 In his reply brief, defendant acknowledges that this court found that the Class 2 version of the AUUW statute passed constitutional muster in *People v. Burns*, 2013 IL App (1st) 120929, *appeal allowed*, No. 117387, but he maintains that we should not rely on that opinion because the supreme court has granted defendant's petition for leave to appeal in that case. We observe, however, that the precedential effect of an appellate court opinion is not weakened by the fact that a petition for leave to appeal has been granted and is pending in that case, and that courts are

bound by the ruling in effect until the supreme court determines otherwise. *People v. Harris*, 123 Ill. 2d 113, 129 (1988).

¶ 11 In *Burns*, this court found that the Class 2 form of AUUW under section 24–1.6(a)(1), (a)(3)(A), "merely regulates the possession of a firearm by a person who has been previously convicted of a felony," and is therefore constitutional. *Burns*, 2013 IL App (1st) 120929 at ¶ 27. Accord, *People v. Moore*, 2014 IL App (1st) 110793-B, ¶ 16; *People v. Soto*, 2014 IL App (1st) 121937, ¶¶ 12-14. Defendant contends that this court should adopt the reasoning and contrary conclusion reached by the Fourth District in *People v. Campbell*, 2013 IL App (4th) 120635, and *People v. Gayfield*, 2014 IL App (4th) 120216-B. In those cases, the respective courts found that the Class 2 form of the AUUW statute was unconstitutional on its face because it required the State to prove the exact same elements as the Class 4 form, which was found unconstitutional in *Aguilar*. *Campbell*, 2013 IL App (4th) 120635 at ¶ 16; *Gayfield*, 2014 IL App (4th) 120216-B at ¶ 30. We continue to find the well-reasoned decision in *Burns* persuasive, and decline to depart from it until instructed otherwise. Accordingly, we find that defendant's conviction for the Class 2 form of the AUUW offense is constitutional and must stand. *Burns*, 2013 IL App (1st) 120929 at ¶ 27.

¶ 12 Defendant also challenges his AUUW conviction for possessing a firearm on a public way without a valid FOID card (720 ILCS 5/24-1.6(a)(1)/(3)(C) (West 2010)), contending that the FOID card provisions of the AUUW statute are unconstitutional because they cannot be severed from the subsections found unconstitutional in *Aguilar*. The State correctly observes that this court expressly rejected that argument in *People v. Henderson*, 2013 IL App (1st) 113294, ¶ 22. We, however, need not address defendant's argument regarding his AUUW conviction for

failing to have FOID card, count 3, because no sentence was imposed on it. The record shows that the trial court merged that conviction into, and imposed the sentence only on count 2. In the absence of a sentence, there is no final judgment, and therefore, that conviction is not before this court. *People v. Caballero*, 102 Ill. 2d 23, 51 (1984).

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

¶ 14 Affirmed.