2025 IL App (3d) 230755-U

Order filed June 30, 2025

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2025

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-23-0755
v.	)	Circuit No. 21-CF-1252
	)	
PATRICK OTCHERE JR.,	)	Honorable Vincent F. Cornelius,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE PETERSON delivered the judgment of the court.
Presiding Justice Brennan and Justice Davenport concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to sustain defendant's conviction for aggravated unlawful use of a weapon and (2) the aggravated unlawful use of a weapon statute is constitutional both facially and as applied to defendant.

¶ 2 Defendant, Patrick Otchere Jr., appeals from his conviction for aggravated unlawful use of a weapon (AUUW) arguing (1) the evidence was insufficient to prove that he was not legally justified in possessing the firearm and (2) the AUUW statute under which he was convicted was unconstitutional, both facially and as applied to him. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 9, 2021, defendant was charged, *inter alia*, with second degree murder (720 ILCS 5/9-2(a)(2), (b) (West 2020)), aggravated battery with a firearm (*id.* § 12-3.05(e)(1)), and AUUW (*id.* § 24-1.6(a)(1), (3)(A-5), (3)(C)), stemming from the shooting death of Zamir Williams on August 27, 2021. Relevant to this appeal, the AUUW charge alleged that defendant knowingly carried an uncased, loaded, and immediately accessible .45-caliber semiautomatic handgun on or about his person while not on his land or in his home at a time when he had not been issued a valid firearm owner's identification (FOID) card or concealed carry license (CCL). Defendant notified the State of his intent to raise the affirmative defense of self-defense. The case proceeded to a jury trial on September 6, 2023. Defendant represented himself with the assistance of standby counsel.

¶ 5 The evidence at trial established that Williams and defendant were friends and lived approximately 1½ blocks apart. At approximately 1 a.m. on August 27, 2021, defendant began packing his belongings at his home. Defendant made multiple trips in and out of the residence. At some point after defendant began removing his belongings, his brother Joseph heard two gunshots and "like, a body, like, thud." Joseph called 911 and then called defendant. Defendant informed Joseph that someone had sent people to their home to hurt them, and Joseph should call the police. Joseph indicated that defendant seemed a bit confused and "there was *** a lot of fear in his voice." When asked if the gunshots that Joseph heard had anything to do with him, defendant said it was self-defense, "that the guy wouldn't move out of his way and that he was going to hurt him and hurt us."

¶ 6 At approximately 2:04 a.m., officers arrived at defendant's residence. They located Williams's body lying on the easement between defendant's residence and a neighboring residence. Williams had no pulse and had blood coming from his mouth and nose. Williams

appeared to have a gunshot wound to his chest. Officers located two .45-caliber shell casings in the driveway and a trail of apparent blood droplets leading from the shell casings to Williams's body. A cell phone was located near Williams's body. After speaking with witnesses at the scene, defendant became a suspect.

¶ 7 At approximately 7:30 a.m., police learned that defendant had driven to a residence in Flossmoor. The occupants of that residence indicated that defendant seemed normal when he arrived. Defendant stayed overnight at the residence. Police searched the residence and located a cell phone, a .45-caliber Smith & Wesson firearm, an empty magazine, and eight rounds of .45-caliber ammunition.

¶ 8 Williams's cause of death was the gunshot wound he sustained to his chest. A bullet was recovered from his body. Forensic firearm testing determined that the two .45-caliber shell casings located in defendant's driveway were fired from the same firearm that was recovered from the Flossmoor residence. DNA testing of the firearm's grip showed a mixture of DNA profiles from multiple contributors, one being defendant. Text messages between Williams and defendant on August 26 and 27 were recovered from defendant's cell phone. In the text messages, Williams accused defendant of stealing his "pipe." Williams threatened to "drop [defendant] low" and send people to his residence. Williams's final text message was sent at 1:48 a.m. Certified abstracts from the Illinois State Police Firearm Services Bureau showed that defendant did not possess, nor had he ever applied for a FOID card or CCL as of June 13, 2022.

¶ 9 Defendant's video recorded interview with Detective Michael Ryan was published to the jury. During the interview, defendant told Ryan that he and Williams had been together earlier in the day, driving around in defendant's vehicle. Both Williams and another friend had their guns in defendant's vehicle. They exited the vehicle and left their guns inside. At this point, defendant

drove off. Text message evidence indicated that this occurred approximately between 6:45 p.m. and 10:45 p.m. on August 26. Defendant denied stealing the guns. Defendant indicated that he drove off because he "don't want to be around that stuff." Defendant stated that he then parked somewhere. He did not want the guns that were in his vehicle. Williams called and threatened defendant. Defendant became aware that other people were trying to kill him over this incident. He drove home. Defendant indicated that he refused to return Williams's gun due to his threats. Williams and defendant continued to argue. Eventually, defendant ended the call and called another friend asking what he should do. Defendant began to gather his belongings from his residence. Defendant was sitting in his vehicle in his driveway when Williams came to his residence. Defendant drove away but ultimately returned because he was afraid for his family's safety. Defendant and Williams continued to argue as defendant drove back and forth several times. Defendant indicated that he was afraid for his life. Williams told defendant, "Bro, I'm about to kill you." Defendant decided to return Williams's gun to defuse the situation. Defendant grabbed the gun from the front passenger side and exited the vehicle, which was parked on the street. Williams was facing defendant. Williams had his hand in his pants and ran at defendant. Defendant thought Williams might be reaching for a gun to shoot him so defendant backed up and shot Williams. Defendant indicated that he did not know how to load a gun and that he did not have to cock or rack the gun before shooting Williams. After shooting Williams, defendant fled as he was afraid that other people might come after him. He drove around for approximately two hours before arriving at the Flossmoor residence.

¶ 10 After the State rested, defendant moved for a directed verdict, asserting self-defense. The court found that the State's evidence indicated defendant acted in self-defense. Further, the court found that the State had been unable to disprove self-defense due to the "combination of the

threatening messages, the victim's arrival at 2:00 o'clock a.m., [and] the defendant's sole witness statement which aligns in parallel fashion to the messages that were sent before his arrival." Accordingly, the court granted defendant's motion for a directed verdict on the second degree murder and aggravated battery charges. The court denied the motion as to AUUW. Defendant did not present any evidence.

¶ 11 During closing arguments, the State argued,

> "when [defendant] drove off, on the public street, he had his gun in his possession, on or about his person in the front passenger seat; nevertheless, even after that *** once he was on the public street that he had to get out of, once he got out of the car, he had that firearm in his possession. At that point, he was not on his land ***."

The jury found defendant guilty of AUUW. Defendant filed a motion to vacate his conviction, challenging the sufficiency of the evidence and the constitutionality of his conviction. The motion was denied. Defendant was sentenced to two years' imprisonment. Defendant appealed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that the evidence was insufficient to prove that he was not legally justified in possessing the firearm, where the court found that defendant had used the weapon in self-defense. Further, defendant argues that the AUUW statute under which he was convicted was unconstitutional, both facially and as applied to him under the test set forth in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022). We consider each argument in turn.

¶ 14 A. Sufficiency of Evidence

¶ 15 In a challenge to the sufficiency of the evidence, the relevant inquiry is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could

have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is not the function of the reviewing court to retry defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). In reviewing the evidence presented, we must "allow all reasonable inferences from that evidence to be drawn in favor of the [State]." *People v. Martin*, 2011 IL 109102, ¶ 15. "A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt." *People v. Belknap*, 2014 IL 117094, ¶ 67.

¶ 16 To convict defendant of the provisions of the AUUW statute for which he was charged, the State had to prove beyond a reasonable doubt that defendant knowingly

> "(1) Carrie[d] on or about his *** person or in any vehicle or concealed on or about his *** person except when on his *** land or in his *** abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm; [and]
>
> ***
>
> (3) One of the following factors is present:
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> ***
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> (A-5) the pistol, revolver, or handgun possessed was uncased, loaded, and immediately accessible at the time of the offense and the person possessing the pistol, revolver, or handgun has not been issued a currently valid license under the Firearm Concealed Carry Act; or
>
> * * *

(C) the person possessing the firearm has not been issued a currently valid [FOID] Card[.]" 720 ILCS 5/24-1.6(a)(1), (3)(A-5), (3)(C) (West 2020).

¶ 17 Defendant argues that, when the court determined that he acted in self-defense during his altercation with Williams, he was legally justified in possessing the firearm which he used at that time. "Self defense, defense of another, and necessity are all justification defenses that employ a similar balancing of the circumstances a defendant faced against the actions he took." *People v. Crowder*, 2018 IL App (1st) 161226, ¶ 29. These defenses can be raised to defend against an AUUW charge. See *id.* (self-defense is an available defense against AUUW); see also *People v. Gullens*, 2017 IL App (3d) 160668, ¶ 20 (necessity defense applied to defendant's conduct when he committed unlawful possession of a weapon by a felon).

¶ 18 Once an affirmative defense of self-defense is raised, the State is required to prove beyond a reasonable doubt, in addition to the elements of the charged offense, that defendant did not act in self-defense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004). The elements of self-defense are: (1) a person was threatened with unlawful force; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the threatened person "actually and subjectively believed a danger existed that required the use of the force" which was applied; and (6) this belief was objectively reasonable. *Id.* at 225. If the State negates any element of self-defense, the claim fails. *Id.*

¶ 19 At trial, the evidence showed that defendant and Williams were together in the hours prior to Williams's death. During this time, defendant drove away with Williams's gun on the passenger seat of his vehicle. Defendant indicated that he did not know anything about guns and would be unable to load the gun, which coupled with the evidence of his actions immediately prior to the

shooting, supports the fact that the gun was loaded, uncased, and easily accessible to defendant as it sat on the front passenger seat. At the time that defendant initially drove away with the gun, no threats or arguments had occurred between the two men. Defendant drove to a location and parked his vehicle before Williams called him, beginning the argument regarding the gun. Thus, when defendant drove away with Williams's gun loaded, uncased, and readily accessible on his passenger seat, he could not have been acting in self-defense as there was no danger of imminent harm. Even when Williams began arguing with and threatening defendant sometime between when he initially drove off and returned home to pack his belongings, the evidence failed to demonstrate that the danger of harm was imminent. "In the context of self-defense, imminent means reasonably probable, not merely possible [citation], and refers not to a future threat but to one that is present [citation] or immediate." (Internal quotation marks omitted.) *People v. Robinson*, 375 Ill. App. 3d 320, 336 (2007). Until Williams appeared at defendant's house, no danger of imminent harm existed. The fact that defendant later used the gun in self-defense has no bearing on the validity of these initial actions. This was consistent with the argument of the State at trial which focused on defendant's driving prior to the shooting. Accordingly, when viewed in the light most favorable to the State, the evidence is sufficient to sustain defendant's conviction for AUUW.

¶ 20 B. Constitutional Challenges

¶ 21 Defendant asserts that the FOID card and CCL requirements of the AUUW statute are unconstitutional facially under the test set forth in *Bruen*, where the State cannot demonstrate historical evidence for criminalizing the act of publicly carrying a gun without a license. Defendant argues that the requirements to obtain a FOID card or CCL unduly burden the right to bear arms where applicants for a FOID card wait up to 30 days for the Illinois State Police to process the application, pay a $10 fee, and provide personal information, which the police can use to verify

the applicant's criminal and mental health history and applicants for a CCL wait up to 90 days, pay a $150 fee, provide personal information, and must complete a required firearms training course. Further, defendant argues that these provisions are unconstitutional as applied to defendant where he faced the imminent threat of death which spilled outside his home onto public property. Initially, we note that the State has asserted that defendant lacks standing to challenge the constitutionality of a statutory licensing requirement as applied to him where the record reflects that defendant did not submit himself to the challenged policy by applying for a FOID card or CCL. See *People v. Thompson*, 2023 IL App (1st) 220429-U, ¶ 59. However, defendant is challenging the constitutionality of the AUUW statute, which incorporates the requirements of a FOID card or CCL. Therefore, defendant has standing to challenge these requirements. See *People v. Mosley*, 2015 IL 115872, ¶ 48.

¶ 22 The second amendment to the United States Constitution 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. A defendant who challenges the constitutionality of a statute "carr[ies] the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional." (Internal quotation marks omitted.) *People v. Rizzo*, 2016 IL 118599, ¶ 23. A facial challenge to the constitutionality of a statute requires a showing that the statute is unconstitutional under any set of facts, thus, the existence of any situation where the statute could be validly applied will cause the challenge to fail. *Id.* ¶ 24. An as-applied challenge requires a showing of unconstitutionality based on a defendant's particular set of facts and circumstances. *People v. Thompson*, 2015 IL 118151, ¶ 36.

¶ 23 In *Bruen*, the Supreme Court analyzed a New York licensing scheme, which required individuals to demonstrate "proper cause" when attempting to obtain a license to carry a firearm

outside the home. *Bruen*, 597 U.S. at 12-14. Those individuals had to show that they possessed a special need for self-protection separate from the general population. *Id.* at 12. In its ruling, the Court emphasized the importance of historical analysis when deciding "whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding." *Id.* at 26. It also explained that individual self-defense was the heart of the right to bear arms. *Id* at 29.

¶ 24 After reviewing the relevant history, the Court concluded New York's licensing regime violated the second amendment. *Id.* at 70. In reaching its decision, the Court noted that 43 states employed a "shall-issue" licensing regime, which requires applicants to undergo a training program or submit to a background check designed to ensure that the people in their jurisdictions are law-abiding, responsible citizens. *Id.* at 38 n.9. It distinguished these regulations from the discretionary regulations enacted by New York, holding that "shall-issue" licensing regimes were not affected by its decision because they "appear to contain only narrow, objective, and definite standards guiding licensing officials, [citation], rather than requiring the appraisal of facts, the exercise of judgment, and the formation of an opinion." (Internal quotation marks omitted.) *Id.*

¶ 25 We decided a similar issue in *People v. Noble*, 2024 IL App (3d) 230089-U, ¶ 16, finding that the FOID requirement of the AUUW statute was facially constitutional. In *Noble*, we determined that the *Bruen* court expressly indicated that nothing about its decision was intended to suggest the unconstitutionality of the "shall-issue" regimes which contain only narrow, objective standards to guide licensing officials. *Id.* The concurrences in *Bruen* echoed the fact that the decision did not prevent States from imposing licensing requirements. See *id.* at 72 (Alito, J., concurring), 79-80 (Kavanaugh, J., concurring). Recently, the Illinois Supreme Court agreed with our interpretation, finding that *Noble* was among several appellate court decisions which "have cited footnote 9 [of the *Bruen* decision] correctly for the proposition that Illinois's shall-issue

licensing regulations are not facially unconstitutional under the second amendment." *People v. Thompson*, 2025 IL 129965, ¶ 46.

¶ 26 While *Bruen* approved of firearms training programs and background checks designed to ensure that the people are law-abiding and responsible, it did not rule out the possibility that challenges may be brought against "shall-issue" regimes where abuses occur, "for example, lengthy wait times in processing license applications or exorbitant fees deny ordinary citizens their right to public carry." *Bruen*, 597 U.S. at 38 n.9; see *People v. Gunn*, 2023 IL App (1st) 221032, ¶ 19, 27. However, we do not find that 30 or 90 days to process applications are lengthy nor the respective fees exorbitant. See *Noble*, 2024 IL App (3d) 230089-U, ¶ 16 (a 30-day processing window and nominal application fee do not unduly burden the right to bear arms). "[T]he Illinois statute mandates issuance of FOID cards and CCLs within the framework of what has always been historically acceptable in the United States." *Gunn*, 2023 IL App (1st) 221032, ¶ 22. Accordingly, defendant's facial challenge to the constitutionality of his AUUW conviction fails.

¶ 27 Turning to defendant's as-applied challenge, defendant contends that the AUUW statute fails to take into consideration that situations involving the imminent threat of death may begin in the home and end on public property as it did in defendant's case. Defendant argues that the AUUW statute under which he was convicted prevents a person like defendant, who does not have either required license to carry a firearm in public, from defending himself outside his home, undermining the central self-defense component of the second amendment. However, we previously determined that defendant was under no imminent threat of danger when he drove away with the firearms and parked before returning to his home. See *supra* ¶ 19. Further, we reiterate that the affirmative defenses of self-defense, defense of another, and necessity apply to possessory offenses such as the one defendant was convicted of. See *Crowder*, 2018 IL App (1st) 161226,

¶ 29. The existence of a legal justification for a defendant's conduct does not render the State unable to employ historically permissible restrictions. Thus, defendant's as-applied challenge fails.

¶ 28 III. CONCLUSION

¶ 29 The judgment of the circuit court of Will County is affirmed.

¶ 30 Affirmed.