

Supreme Court Summaries
Opinions filed June 16, 2016

People v. McFadden, 2016 IL 117424

Appellate citation: 2014 IL App (1st) 102939

JUSTICE THEIS delivered the judgment of the court, with opinion.

Chief Justice Garman and Justices Freeman, Thomas, and Karmeier concurred in the judgment and opinion.

Justice Kilbride concurred in part and dissented in part, with opinion, joined by Justice Burke.

Statute makes it unlawful for a person to knowingly possess a firearm if he has been convicted of a felony under the laws of this State or any other jurisdiction. The prosecution appealed to the Illinois Supreme Court in this Cook County case in which the appellate court refused to uphold this defendant's conviction for unlawful use of a weapon by a felon, even though, in that same decision, the appellate court had affirmed his related convictions for three counts of armed robbery with which the charge at issue was joined for the 2008 bench trial. The background for this issue is as follows.

In 2002, when he was 17, the defendant was indicted on six different charges of aggravated unlawful use of a weapon in what is now known as case number 02CR-30903. Two different weapons were involved. Statutory citations were given for each charge, and two of the charges were based on the same provision of the statute on aggravated unlawful use of a weapon that would later be invalidated by the Illinois Supreme Court in *People v. Aguilar*, 2013 IL 112116. The defendant pled guilty to one count of aggravated unlawful use of a weapon in exchange for dismissal of five counts, but there is no confirmation in the record as to which count he pled guilty or as to the factual basis for the plea.

Several years later, McFadden reoffended, and the evidence at a 2008 joint bench trial established that the defendant had robbed three different victims at gunpoint within a 24-hour period. He was found guilty of three counts of armed robbery and also of the count of unlawful use of a weapon by a felon, which is at issue here. As to the latter, the defendant stipulated that "he has previously been convicted of aggravated unlawful use of [a] weapon under Case No. 02 CR 30903." The court admonished the defendant regarding his understanding that a stipulation is an agreement, and he acknowledged he understood that he was agreeing he had a prior conviction for aggravated unlawful use of a weapon.

In 2013, the supreme court issued its *Aguilar* decision, invalidating the provision of the statute on aggravated unlawful use of weapons which imposed a flat ban on carrying ready-to-use guns outside the home, on second amendment grounds.

In 2014, the appellate court relied on *Aguilar* to accept the defendant's argument that there had been a failure of proof as to the charge of unlawful use of a weapon by a felon. The State objected to the vacating of this conviction and appealed. In this decision, the supreme court agreed with the State and said that the appellate court had erred.

The supreme court said that the issue here was not the validity of the challenged section of the statute on aggravated unlawful use of a weapon, but the status of the defendant as a felon at the time he committed the three armed robberies, and he has already stipulated to this. To avoid being guilty of unlawful use of a weapon by a felon, the defendant would have had to clear his felon status before he purchased the involved guns and committed those armed robberies. This he did not do.

The appellate court's vacating of the conviction for unlawful use of a weapon by a felon was reversed. No remand for resentencing was called for.