

THIRD DIVISION
August 3, 2011

2011 IL App (1st) 093418-U
No. 1-09-3418

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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08 CR 14227
)	
RASHEEN AKINS,)	Honorable
)	Victoria A. Stewart,
Defendant-Appellant.)	Judge Presiding.

JUSTICE STEELE delivered the judgment of the court.
Presiding Justice Quinn and Justice Murphy concurred in the judgment.

ORDER

Held: Aggravated unlawful use of a weapon conviction affirmed over claim that it violated defendant's second amendment rights under the Illinois and federal constitutions; Violent Crime Victim's Assistance fee vacated and reinstated in different amount; court system fee found inapplicable and vacated.

¶ 1 Following a bench trial, defendant Rasheen Akins was found guilty of four counts of aggravated unlawful use of a weapon (AUUW) and sentenced to one year of probation. He was

also assessed fines and fees totaling \$300. On appeal, defendant challenges the constitutionality of the AUUW statute, and certain of the pecuniary penalties imposed by the court.

¶ 2 The record shows, in relevant part, that about 10:15 p.m., on July 16, 2008, police responded to a call of an individual with a gun at 10432 South Maryland Street, in Chicago. When they arrived on the scene, they saw defendant, who matched the description of the offender given to them. As they approached him, defendant fled into a vacant lot. The officers gave chase and pursued him into an alley where Chicago police officer Inez Benson observed him remove a blue steel, semi-automatic Gloc handgun, loaded with 17 live rounds, from his waistband and discard it into a yard. Defendant was apprehended in the adjacent yard and did not furnish a valid firearm owner's identification (FOID) card. The court found defendant guilty of four counts of AUUW and sentenced him to one year of probation.

¶ 3 In this appeal from that judgment, defendant first contends that the AUUW statute violates the right to bear arms under the Illinois and federal constitutions. Although defendant did not raise and preserve this issue in the circuit court, a challenge to the constitutionality of a statute may be raised at any time (*People v. Bryant*, 128 Ill. 2d 448, 454 (1989)), and we review such a challenge *de novo* (*People v. Carpenter*, 228 Ill. 2d 250, 267 (2008)).

¶ 4 The AUUW statute makes it unlawful to carry or possess a firearm when certain aggravating circumstances are present. 720 ILCS 5/24-1.6(a)(1)-(3) (West 2008). However, the statute also provides various exceptions from criminal liability, including, as pertinent to this appeal, when one carries or possesses the firearm on his or her land or in his or her abode. 720 ILCS 5/24-1.6(a)(1)-(2) (West 2008). Although the AUUW statute has recently been amended to add exceptions where one carries or possesses a weapon in his or her "legal dwelling" or has permission to do so as an invitee on the land or in the "legal dwelling" of another (720 ILCS 5/24-1.6(a)(1)-(2) (West 2008) (eff. Aug. 25, 2009)), that amendment does not apply retroactively to defendant's conduct which predated the amendment (*People v. Aguilar*, 408 Ill. App. 3d 136, 141-42 (2011)).

¶ 5 Here, defendant was properly convicted under the AUUW statute on evidence that he knowingly carried an uncased, loaded, and immediately accessible firearm (720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2008)), and none of the enumerated exceptions were relied upon or shown to exist. Having so found, we must address the constitutionality of the statute. *Aguilar*, 408 Ill. App. 3d at 142. Defendant maintains that the AUUW statute is facially unconstitutional under the United States Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010).

In *Heller*, 554 U.S. at 635, the Supreme Court held that the second amendment precluded the District of Columbia from banning the possession of handguns in the home and from prohibiting individuals from rendering those firearms operable for the purpose of self-defense. In *McDonald*, ___ U.S. ___, 130 S. Ct. at 3050, the Supreme Court held that the right to keep handguns inside the home for self-defense was incorporated in the due process clause of the fourteenth amendment.

¶ 6 Initially, the parties disagree as to which level of scrutiny should be applied when assessing defendant's second amendment challenge to the AUUW statute. Defendant asserts that a fundamental right is at issue and that strict scrutiny is warranted. The State responds that we should review the present challenge under a rational basis standard.

¶ 7 We have previously found, however, that intermediate scrutiny should apply in the context of a second amendment challenge to the AUUW statute. *Aguilar*, 408 Ill. App. 3d at 146. In doing so, we noted that the majority in *Heller* rejected the application of rational basis review to second amendment challenges, but the *Heller* court also did not hold that strict scrutiny should be applied. *Aguilar*, 408 Ill. App. 3d at 144. We thus adopted the view of various federal courts of appeal which have found intermediate scrutiny to be the appropriate standard of review for second amendment challenges. *Aguilar*, 408

Ill. App. 3d at 145-46. We continue to find that reasoning persuasive, and thus apply intermediate scrutiny to the present challenge.

¶ 8 In *Aguilar*, this court found that the AUUW statute at issue survives such scrutiny. We noted that the purpose of the AUUW statute:

"is to allow the State to seek a harsher penalty for any person in the State of Illinois who does not fall under a specific exemption from carrying a loaded weapon on or about his person or in any vehicle because of the inherent dangers to police officers and the general public, even if the person carrying the weapon has no criminal objective."

Aguilar, 408 Ill. App. 3d at 146 (quoting *People v. Sole*, 357 Ill. App. 3d 988, 992 (2005) (internal quotations omitted)). We then found that the AUUW statute did not violate defendant's second amendment rights because it is substantially related to that important governmental objective, and that the fit between the statute and the governmental objective was reasonable.

Aguilar, 408 Ill. App. 3d at 146.

¶ 9 This court has also noted that in *Heller* and *McDonald*, the Supreme Court did not define the fundamental right to bear

arms so as to include activity barred by the AUUW statute. *People v. Dawson*, 403 Ill. App. 3d 499, 510 (2010). Rather, the AUUW statute expressly excludes from its proscriptions the act of possessing a firearm within one's abode, and thus does not implicate the right to keep a firearm in the home for self-defense. *Dawson*, 403 Ill. App. 3d at 510. We thus continue to find no basis for holding the AUUW statute unconstitutional under the second amendment.

¶ 10 Defendant, nonetheless, claims that the Supreme Court's holding in *Heller* was not limited to the right to carry firearms in the home, but rather, extends beyond the home as well. We have repeatedly rejected this claim (*Aguilar*, 408 Ill. App. 3d at 143; *People v. Williams*, 405 Ill. App. 3d 958, 962 (2010); *Dawson*, 403 Ill. App. 3d at 508), and continue to do so here. The issue before the Court in *Heller* was limited to firearms in the home for self-defense purposes, and that narrow focus defeats defendant's claim that it extends beyond that usage. *Williams*, 405 Ill. App. 3d at 962.

¶ 11 For that reason, we also find defendant's reliance on *De Jonge v. Oregon*, 299 U.S. 353 (1937), is misplaced. In that case, defendant had been criminally charged with participating in a Communist Party meeting in violation of the fundamental right to peaceable assembly (*De Jonge*, 299 U.S. at 362, 364-65). Here, as discussed above, the Supreme Court did not recognize a

fundamental right to carry firearms outside the home. We thus find *De Jonge* inapplicable to the case at bar.

¶ 12 Lastly, defendant claims that the supreme court decision in *Kalodimos v. Village of Morton Grove*, 103 Ill. 2d 483 (1984), cannot survive the holdings in *Heller* and *McDonald*. Even if we were to agree, this court has no authority to reverse a decision entered by the supreme court. *Aguilar*, 408 Ill. App. 3d at 150 (citing *People v. Artis*, 232 Ill. 2d 156, 164 (2009)). We therefore conclude that the AUUW statute does not violate the right to bear arms under the Illinois or federal constitutions, and reject defendant's contrary claim.

¶ 13 Defendant next challenges the calculation and assessment of certain pecuniary penalties imposed by the court. Although defendant did not raise these claims in the circuit court, this court has recognized that a sentencing error may affect defendant's substantial rights, and thus, can be reviewed for plain error. *People v. Black*, 394 Ill. App. 3d 935, 939 (2009) (citing *People v. Hicks*, 181 Ill. 2d 541, 544-45 (1998)). The propriety of court-ordered fines and fees raises a question of statutory interpretation, which we review *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 14 Defendant first claims that his \$20 fee under the Violent Crime Victim's Assistance Act (VCVA) (725 ILCS 240/10 (West 2008)) should be reduced to \$4 where he was also assessed a

\$30 Children's Advocacy Center fine. The State concedes that defendant should only have been assessed \$4 pursuant to section 10(b) of the VCVA (725 ILCS 240/10(b) (West 2008)). We agree, and therefore vacate the \$20 VCVA fine and order the clerk to amend defendant's fee order to include a \$4 fee pursuant to section 10(b) of the VCVA. *People v. Jones*, 397 Ill. App. 3d 651, 660-61 (2009).

¶ 15 Defendant next contests the assessment of a \$5 court system fee. The State concedes that the assessment was improper in this case. We agree that the fee does not apply because defendant was convicted of AUUW, a violation of the Criminal Code of 1961, and not a violation of the Illinois Vehicle Code or of a similar municipal ordinance (55 ILCS 5/5-1101(a) (West 2008)), to which the fee is directed. We therefore vacate the \$5 court system fee.

¶ 16 Defendant finally contends that he was improperly assessed a \$25 court services fee, claiming that the statute only authorizes assessment of the fee under certain criminal statutes, none of which include the offense of armed robbery. The State responds that the statute authorizes assessment of the fee in all criminal cases resulting in a judgment of conviction.

¶ 17 Under the Counties Code (55 ILCS 5/5-1103 (West 2008)), the court may assess a \$25 court services fee against a defendant upon a finding of guilty resulting in a judgment of conviction,

or for an order of supervision or probation without entry of judgment made under specific enumerated criminal provisions. *People v. Williams*, 405 Ill. App. 3d 958, 965 (2010). In this case, a judgment of conviction was entered against defendant, which alone made him eligible for the court services fee. *Williams*, 405 Ill. App. 3d at 965. We thus find that the trial court did not err in assessing him a \$25 court services fee.

¶ 18 For the reasons stated, we vacate the \$20 VCVA fee and the \$5 court system fee, order the clerk to modify the fines and fees order to that effect and to include a \$4 fee pursuant to section 10(b) of the VCVA, and affirm the judgment in all other respects.

¶ 19 Affirmed as modified.