

2011 IL App (1st) 100268-U
No. 1-10-0268

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).

FIFTH DIVISION
July 22, 2011

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. 09 CR 4809
)	
ANTWUAN REED,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE Epstein delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse
concur in the judgment.

O R D E R

Held: The aggravated unlawful use of a weapon statute did not violate defendant's constitutional right to bear arms. This court affirmed defendant's conviction and vacated certain monetary assessments.

¶ 1 Following a bench trial, defendant Antwuan Reed was found guilty of aggravated unlawful use of a weapon and sentenced

to 30 months' probation. Defendant contends the aggravated unlawful use of a weapon (AUUW) statute violates his constitutional right to bear arms. He also challenges certain fines and fees. We affirm.

¶ 2 Because defendant does not challenge the sufficiency of the evidence to sustain his conviction, we briefly review the facts. Trial evidence showed that Chicago police officer Charles Honore was working surveillance on the south side of the city when he heard tires squeal, then saw defendant retrieve an object from the rear tire of a parked vehicle. Defendant stood on 71st Street brandishing what was later determined to be a loaded gun while cars passed. Defendant returned the gun to the vehicle, where officers retrieved it. Although defendant denied possessing the gun, the court found the State's witnesses more credible. Defendant was found guilty of the AUUW, then sentenced to 30 months' probation.

¶ 3 Defendant contends the AUUW (see 720 ILCS 5/24-1.6(a)(1), (2), (3)(A) (West 2010)) statute violates his constitutional right to bear arms. He relies on *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. ___, 130 S. Ct. 3020 (2010), both of which held that the second amendment precluded banning possession of loaded handguns in the home for self-defense. Defendant argues the holdings should be extended to the facts of this case, where

defendant bore a loaded and accessible gun outside his home, to invalidate his conviction.

¶ 4 This court has definitively determined that the Illinois AUUW statute is not unconstitutional in light of the holdings in *Heller* and *McDonald*. *People v. Mimes*, No. 1-08-2747, slip op. at 35-36 (June 20, 2011); *People v. Aguilar*, 408 Ill. App. 3d 136, 148-49 (2011), appeal allowed No. 112116 (May 25, 2011); *People v. Williams*, 405 Ill. App. 3d 958, 961 (2010); *People v. Dawson*, 403 Ill. App. 3d 499, 510 (2010); see also *People v. Coleman*, No. 1-09-0417, slip op at 15 (April 29, 2011) (upholding armed habitual criminal statute as constitutional); *People v. Ross*, 407 Ill. App. 3d 931, 942 (2011) (same). The Supreme Court's decisions in *Heller* and *McDonald* do not define the fundamental right to bear arms to include the activity barred by the AUUW statute. See *Aguilar*, 408 Ill. App. 3d at 148. We see no reason to depart from the aforementioned soundly reasoned decisions.

¶ 5 Defendant next challenges the imposition of various fines, fees, and costs. The State concedes that the following monetary penalties should be vacated because they are unrelated to defendant's gun conviction and case: a \$5 court system fee (55 ILCS 5/5-1101(a) (West 2010)) for violating the Illinois Vehicle Code or a similar local provision; a \$20 preliminary hearing fee (55 ILCS 5/4-2002.1 (West 2010)); and a \$100 trauma

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fund fine (730 ILCS 5/5-9-1.10 (West 2010)). See *Mimes*, 1-08-2747, slip op. at 36. We vacate these monetary penalties.

¶ 6 In addition, the State also agrees with defendant that the \$20 Violent Crime Victims Assistance Act (725 ILCS 240/10(c)(2) (West 2010)) penalty must be vacated and, in its place, we must impose the \$4-per-\$40-of-fine in the amount of \$4 pursuant to the statute (725 ILCS 240/10(b) (West 2010)). See *People v. Evangelista*, 393 Ill. App. 3d 395, 401-02 (2009). We agree.

¶ 7 We order the clerk of the circuit court to correct the mittimus to reflect the above-stated changes for a total fines, fees, and costs owed of \$529.

¶ 8 Affirmed in part; vacated in part; mittimus corrected.