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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 12104
)	
CHARLES GRANT,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the circuit court is affirmed because the defendant's "as applied" constitutional challenge is not subject to review; the aggravated unlawful use of a weapon statute is not unconstitutional on its face; this court is unable to reexamine decisions of the supreme court; and the circuit court properly imposed monetary assessments on the defendant.
- ¶ 2 This appeal arises from an October 15, 2009 judgement which found defendant-appellant Charles Grant (Charles) guilty of aggravated unlawful use of a weapon (AUUW). On appeal, Charles argues that: (1) the AUUW statute violates the second amendment and is unconstitutional as it applies to him; (2) the AUUW statute violates the second amendment and is unconstitutional on its face; (3) in light of *District of Columbia v. Heller*, 554 U.S. 570 (2008), this court should

reexamine the Illinois Supreme Court's decision in *Kalodimos v. Morton Grove*, 103 Ill. 2d 483 (1984); and (4) this court should vacate a portion of the monetary assessments imposed on him by the trial court. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4 On June 19, 2009, Charles was arrested on the front porch of his residence at 10920 South Wabash Avenue, Chicago, Illinois (the Grant residence), after police found a handgun in his possession. Subsequently, Charles was charged with four counts of AUUW. Specifically, count I charged Charles with knowingly carrying an uncased, loaded and immediately accessible firearm on or about his person at a time when he was not on his own land, abode or fixed place of business pursuant to section 24-1.6(a)(1)(3)(A) of the Criminal Code of 1961 (Code) (720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2008)); count II charged Charles with knowingly carrying an uncased, loaded and immediately accessible firearm on or about his person at a time when he was not on his own land, abode or fixed place of business and had not been issued a valid Firearm Owner's Identification (FOID) card pursuant to section 24-1.6(a)(1)(3)(C) of the Code; count III charged Charles with knowingly carrying an uncased, loaded and immediately accessible firearm on or about his person on a public street in the city of Chicago at a time when he was not on his own land, abode or fixed place of business and was not an invitee thereon for the purpose of display of such weapon or lawful commerce in weapons pursuant to section 24-1.6(a)(2)(3)(A) of the Code; and count IV charged Charles with knowingly carrying an uncased, loaded and immediately accessible firearm on or about his person on a public street in the city of Chicago at a time when he was not on his own land, abode

or fixed place of business, was not an invitee thereon for the purpose of display of such weapon or lawful commerce in weapons, and had not been issued a valid FOID card pursuant to section 24-1.6(a)(2)(3)(C) of the Code.

¶ 5 On September 23, 2009, Charles filed a motion to quash arrest and suppress evidence which alleged that he was unlawfully arrested in violation of the fourth amendment of the United States Constitution. On that same day, the circuit court of Cook County simultaneously conducted a bench trial on the charges as well as a hearing on Charles' motion to quash arrest and suppress evidence. Chicago police officer Dan Kasper (Officer Kasper) testified that at 10:20 p.m. on June 19, 2009, he and his partner, Officer Mohammad, were on patrol when they received a radio call of "shots fired" in the vicinity of the Grant residence. The officers were in uniform and were driving an unmarked police car. Officer Mohammad was driving the police car and Officer Kasper was in the passenger seat. After receiving the call of "shots fired," the officers "proceeded down 109th traveling southbound, going at a slow rate of speed, just checking out the neighborhood."

¶ 6 As the officers approached the Grant residence, Officer Kasper observed Charles standing on the sidewalk in front of the residence. Officer Kasper testified that when Charles saw the police car, he turned and started running toward the residence and Officer Kasper saw a handgun in Charles' hand. Officer Kasper then exited the police car and pursued Charles. Officer Kasper testified that Charles ran up the front stairs of the house onto the porch, and then tried to enter the house. However, Officer Kasper was able to apprehend Charles on the front porch before he entered the house. Officer Kasper recovered a .38-caliber revolver from Charles' right hand. Officer Kasper stated that there were four or five other men sitting on the porch, and Officer Mohammad helped him

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place Charles into custody. Officer Kasper testified that the handgun recovered from Charles was uncased and loaded with five live rounds. Officer Kasper then read Charles his Miranda rights. Officer Kasper testified that Charles indicated that he understood his Miranda rights and agreed to speak with the officers. Charles told the officers that he had the handgun because there had been a lot of shooting in the area and he kept it for his protection. Charles also told the officers that he bought the handgun for \$75 from a "crack head." Officer Kasper testified that Charles stated that he ran from the officers because they are the police. Officer Kasper also testified that Charles stated that he did not have a current valid FOID card.

¶ 7 Officer Mohammad's testimony substantially corroborated Officer Kasper's testimony. Officer Mohammad testified that on June 19, 2009, he was working with Officer Kasper. The officers were in uniform and Officer Mohammad was driving an unmarked police car. Officer Mohammad testified that shortly before 10:30 p.m., the officers received a radio call of "shots fired" in the vicinity of the Grant residence. The officers responded to the location of the call and Officer Mohammad observed Charles standing on the sidewalk in front of the residence. Officer Mohammad saw a handgun in Charles' right hand. Officer Mohammad testified that when Charles saw the police car, he turned and ran toward the residence. Officer Mohammad testified that Officer Kasper exited the police car and chased Charles. Officer Kasper apprehended Charles on the front porch of the residence. Officer Mohammad testified that he saw Officer Kasper recover a .38-caliber handgun from Charles. Officer Mohammad stated that the handgun was loaded with five live rounds. Officer Mohammad testified that there were four or five men drinking on the porch of the Grant residence.

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¶ 8 The parties stipulated that Officer Kasper recovered a .38-caliber handgun loaded with five live rounds.

¶ 9 Junior Grant (Junior), Charles' brother, testified that he lives with his mother, his mother's husband, and his four brothers. Junior testified that at 10 p.m. on June 19, 2009, he was sitting on the porch of the Grant residence drinking in celebration of his older brother's twenty-first birthday. Junior stated that there were four other people on the porch with him: Charles; his brother, Edward; and two other friends. Junior testified that the group began sitting on the porch at 9:30 p.m. and did not go inside. Junior stated that Charles was on the porch the whole time, but also stated that Charles went inside the house. Junior testified that while the group was on the porch, a police officer approached the porch with his gun drawn and told everyone not to move. At that time, Charles was holding a beverage and his cellular phone. Junior testified that the police officer focused solely on Charles, and the police officer patted down Charles. Junior stated that his mother then came outside to see what was happening, and the police officer found the handgun on Charles. Junior testified that he was not sure if Charles attempted to go inside the house because there were two other officers present with their guns raised at the group on the porch. Junior stated that he thought there were three officers at the Grant residence, but he was not sure and could not remember what they looked like. Junior testified that after the first police officer found the handgun on Charles, the officers patted down everyone on the porch.

¶ 10 Charles testified that around 10 p.m. on June 19, 2009, he was on the porch of the Grant residence with his brothers celebrating his younger brother's twenty-first birthday. Around 10:20 p.m., the group heard gun shots in the area. Charles testified that five or ten minutes later, he was

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talking on his cellular phone and attempting to go inside the house when the police "rushed [the] porch." The police officers only approached Charles, and did not focus on anyone else. Charles stated that he was holding his cellular phone in one hand and a beverage in his other hand. Charles testified that he asked a police officer if he could go inside the house to get his ID because he knew that he had a handgun in his pocket. Charles stated that the police officer threw him against a wall, threw his beverage and cellular phone out of his hands, told him not to move, and searched him. However, Charles later stated that his cellular phone and beverage fell out of his hands when the officer threw him against the wall. Charles testified that the police officer found a handgun in his pocket. Charles was then arrested and taken to the police station.

¶ 11 Charles testified that he told the police that he had the handgun because there was a lot of shooting in the area and he needed it for protection. Charles stated that he never left the porch or stood on the sidewalk. Charles testified that he bought the handgun from a "crack head" for \$75. According to Charles, he never ran from the police.

¶ 12 After hearing closing argument from defense counsel, the trial court denied Charles' motion to quash arrest and suppress evidence, and made a general finding that Charles was guilty of AUUW. On December 21, 2009, Charles was sentenced to 18 months' probation. The trial court also ordered Charles to pay the clerk of the court \$200 for "State DNA ID System" pursuant to section 5-4-3(j) of the Unified Code of Corrections (730 ILCS 5/5-4-3(j) (West 2008)); and \$20 for the Violent Crime Victims Assistance Fund pursuant to section 10(c)(2) of the Violent Crime Victims Assistance Act (725 ILCS 240/10(c)(2) West 2008)). On January 6, 2010, Charles filed a timely notice of appeal. Therefore this court has jurisdiction to consider Charles' arguments on appeal

pursuant to Illinois Supreme Court Rule 603 (eff. Feb. 6, 2013) and Rule 606 (eff. Feb. 6, 2013).

¶ 13

ANALYSIS

¶ 14 On appeal, Charles argues that: (1) the AUUW statute violates the second amendment and is unconstitutional as it applies to him; (2) the AUUW statute violates the second amendment and is unconstitutional on its face; (3) in light of *Heller*, this court should reexamine the Illinois Supreme Court's decision in *Kalodimos*; and (4) this court should vacate a portion of the monetary assessments imposed on him by the trial court. However, as the State points out, as to each of Charles' arguments, this court is either unable to address the issues that Charles presents for procedural reasons, or has repeatedly rejected the arguments that Charles presents.

¶ 15 Specifically, Charles argues that the AUUW statute is unconstitutional as applied to him because he possessed a handgun for self-defense only a few feet away from his property. However, as the State points out, although a constitutional challenge to a statute may be raised at any time, an as-applied challenge is not subject to review where the defendant failed to raise the issue before the trial court and the court did not have an opportunity to conduct an evidentiary hearing or make a factual finding regarding the issue. *People v. Spencer*, 2012 IL App (1st) 102094, ¶¶ 23, 32. See *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 228 (2010); *In re Parentage of John M.*, 212 Ill. 2d 253, 268 (2004). We note that in this case, Officer Kasper and Charles testified that Charles told the police that he possessed the handgun for protection. However, Charles did not raise the "as applied" argument at trial, and the trial court therefore did not have an opportunity to hold an evidentiary hearing on the issue of self-defense. Accordingly, the State was unable to respond to an issue that was not raised. Further, the trial court could not make a finding on an issue that was not

raised. Therefore, Charles' argument that the AUUW statute is unconstitutional as applied to him, is not subject to review.

¶ 16 Next, Charles argues that the AUUW statute is unconstitutional on its face because it violates the second amendment of the United States Constitution. The second amendment states "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. Charles challenges section 24-1.6(a)(1)(3)(A) of the Code, which states in pertinent part:

"(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode or fixed place of business any pistol, revolver, stun gun or taser or other firearm; [and]

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense."

720 ILCS 5/24-1.6(a)(1)(3)(A) (West 2008).

Statutes are presumed to be constitutional, and the party that challenges the validity of a statute has the burden of clearly establishing a constitutional violation. *People v. Jones*, 223 Ill. 2d 569, 595-96

(2006). This court has the duty to construe statutes so that their constitutionality is upheld if there is any reasonable way to do so. *Id.* A facial challenge to a statute is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Constitutionality is a pure question of law, therefore our standard of review is *de novo*. *Jones*, 223 Ill. 2d at 596.

¶ 17 Although Charles argues that the AUUW statute is a complete prohibition on the second amendment right to self-defense, he is unable to establish that there are no set of circumstances under which the statute would be valid. Notably, the AUUW statute is not a complete prohibition on the second amendment right to self-defense in that it only restricts *the manner* in which firearms may be carried outside the home, and does not restrict the carrying of firearms altogether. See *People v. Williams*, 2011 IL App (1st) 093350, ¶ 55. For example, if a person was not on his land or in his home or place of business, a firearm could be carried if it is loaded and inside a case or uncased and unloaded. *Id.* Thus, Charles has failed to satisfy the standard set forth in *Salerno*. Moreover, this court has repeatedly applied the intermediate scrutiny standard to the AUUW statute and held that it is constitutional. See *Williams*, 2011 IL App (1st) 093350; *People v. Alvarado*, 2011 IL App (1st) 082957; *People v. Montyce H.*, 2011 IL App (1st) 101788; *People v. Mimes*, 2011 IL App (1st) 082747; *People v. Aguilar*, 408 Ill. App. 3d 136 (2011). We see no reason to deviate from the prior holdings of this court. Therefore, we are not persuaded by Charles' argument that the AUUW statute is unconstitutional on its face.

¶ 18 Additionally, Charles argues that in light of *Heller*, this court should reexamine the Illinois

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Supreme Court's decision in *Kalodimos*. However, we rejected this exact argument in *Aguilar* because this court lacks the authority to overrule decisions of the supreme court, which are binding on all lower courts. *Aguilar*, 408 Ill. App. 3d at 149-50. Therefore, we decline Charles' invitation to reexamine *Kalodimos*.

¶ 19 Finally, Charles argues that this court should vacate a portion of the monetary assessments imposed on him by the trial court. Specifically, he argues that the \$200 assessment for "State DNA ID system" was a "fine" and not a "fee." Thus, Charles contends that he was entitled to a \$5-per-day credit for the time he spent in custody; and the \$20 assessment for the Violent Crime Victims Assistance Fund should be vacated because that penalty only applies when no other fines are imposed. However, as the State points out, the Illinois Supreme Court has recently held that the \$200 DNA charge is not a fine and is not subject to offset by presentence incarceration credit. *People v. Johnson*, 2011 IL 111817, ¶ 28. Thus, Charles' argument on this issue is without merit.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 21 Affirmed.