

No. 1-09-2813

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 Cook County, Illinois. |
| Plaintiff-Appellee, |) | |
| |) | |
| v. |) | No. 08 CR 21613 |
| |) | |
| DEANTE WEST, |) | Honorable Victoria Stewart, |
| |) | Judge Presiding. |
| Defendant-Appellant. |) | |

JUSTICE SIMON delivered the judgment of the court.
Justices Hyman and Pierce concurred in the judgment.

ORDER

¶ 1 *HELD*: Where Illinois case law has answered the question of the constitutionality of the Class 2 form of aggravated unlawful use of a weapon (AUUW) following the Illinois Supreme Court ruling declaring the Class 4 form of the AUUW statute (720 ILCS 5/24-1.6(a) (West 2006)), void *ab initio*, defendant's conviction for the Class 2 form is affirmed.

¶ 2 Following a bench trial, defendant, Deante West, was convicted of four counts of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1) (West 2006)) (AUUW) and two counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2006)). The convictions were merged into the first count of AUUW, the Class 2 form. Defendant, who had

two prior convictions, was sentenced to four years' imprisonment. Defendant appealed, arguing that following *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010), the AUUW statute must be stricken as unconstitutional and his conviction must be reversed. We rejected defendant's argument and affirmed the holding of the trial court and defendant sought review of that decision before our supreme court.

¶ 3 Our supreme court entered a supervisory order directing this court to vacate our prior holding and reconsider the judgment to determine if another outcome is warranted in light of the decision in *People v. Aguilar*, 2013 IL 112116. Our prior judgment was vacated and both parties provided supplemental briefs. For the following reasons, we affirm defendant's conviction and sentence.

¶ 4

I. BACKGROUND

¶ 5 At trial, the State presented the testimony of Officer Brian McDevitt of the Chicago police department. McDevitt testified that around midnight on October 31, 2008, he and his partner, Officer Edward May, were on-duty and driving near the 6300 block of South Francisco Avenue in their unmarked police car when they came upon a double-parked vehicle that was blocking the road. The officers stopped approximately 25 feet from the vehicle and McDevitt saw the driver exit the double-parked vehicle. In court, McDevitt identified defendant as the driver.

¶ 6 McDevitt testified that defendant had a black object in his hand. McDevitt believed the object was a handgun so he exited the police car and approached defendant with his service revolver drawn and announced his office. He testified that he saw defendant remove the object from his waistband and throw it into the vehicle. May detained defendant and the officers

asked the occupants of the vehicle to get out. When they exited, McDevitt saw a handgun on the driver's side floorboard.

¶ 7 McDevitt testified that he retrieved the handgun, a blue steel .357 Smith and Wesson, loaded with six .38 caliber rounds. The occupants responded that the handgun was not theirs. Defendant could not produce a firearm owner's identification card and was placed under arrest. At the police station, defendant told McDevitt that the handgun was his and he had it for protection. The parties stipulated to defendant's prior conviction for possession of a controlled substance with intent to deliver and the State rested.

¶ 8 Defendant presented the testimony of Jovaris Baugh, one of the passengers in his vehicle on the night defendant was arrested. Baugh testified that he and his friend, "Beardog," saw defendant driving by West 65th Street and South Mozart Street when they asked him for a ride to Baugh's girlfriend's house. They were immediately pulled over by an unmarked police car and all three were ordered out of the car, put in handcuffs, and placed in the back of the police car. Baugh testified that the police searched defendant's car and the police asked who owned the handgun they found in the vehicle. Baugh testified that there was a gun under the passenger seat of the vehicle. He stated that he did not see defendant with a handgun that night and defendant never admitted that the handgun was his.

¶ 9 Following closing arguments, the trial court found defendant guilty of all counts. Defendant's motion for a new trial was denied and the trial court merged all counts into the first count for the Class 2 form of AUUW and sentenced defendant to four years' imprisonment. We rejected defendant's appeal and affirmed the holding of the trial court. Defendant sought review of that decision before our supreme court. In light of the decision in *People v. Aguilar*, 2013 IL 112116, our supreme court entered a supervisory order directing this court to vacate our prior

holding and reconsider the judgment to determine if another outcome is warranted. Our prior judgment was vacated and both parties filed supplemental briefs.

¶ 10

II. ANALYSIS

¶ 11 Defendant argues that, following *Aguilar*, his conviction must be reversed as violating his second amendment right to bear arms. In *Aguilar*, our supreme court declared the Class 4 form of AUUW facially unconstitutional, as it violated the second amendment, as recently construed by our United States Supreme Court. *Id.* at ¶¶ 18-20, 22, citing *Heller* and *McDonald*. In contravention of the right to keep and bear arms, which was found to extend outside of the home, the Class 4 form of AUUW was found to be a comprehensive ban that categorically prohibited possession and use of a firearm for self-defense outside of the home. *Id.* Accordingly, the *Aguilar* court reversed the defendant's conviction for AUUW and remanded the matter for sentencing on a separate conviction. *Id.* at ¶ 30.

¶ 12 Following *Aguilar*, this court has addressed the very issue before us now. *People v. Burns*, 2013 IL App (1st) 120929; *People v. Soto*, 2014 IL App (1st) 121937. In *Burns*, the defendant was convicted of the Class 2 form of AUUW based on his prior felony conviction for possession of a controlled substance with intent to deliver. *Burns*, 2013 IL App (1st) 120929 at ¶¶ 16, 18. The court highlighted Justice Scalia's statement for the *Heller* majority confirming that the right to keep and bear arms was subject to meaningful regulation and longstanding prohibitions on the possession of firearms, such as by felons and other enumerated examples. *Id.* at ¶¶ 24-27, The court next cited to *Aguilar*, where our supreme court upheld the defendant's other conviction for unlawful possession of a firearm, based on the defendant's age, 17-years-old, at the time of the conviction and the longstanding prohibition against the juvenile possession of firearms. *Id.* at ¶ 26. Accordingly, the court upheld the conviction for Class 2 AUUW as it prohibits possession of

firearms by felons, conduct that falls outside of the protections of the second amendment. *Id.* at ¶ 27.

¶ 13 In *Soto*, this court recently followed *Burns* in considering the effect of *Aguilar* on the defendant's 2008 conviction for the Class 2 form of AUUW. The defendant in *Soto* had a prior felony conviction for the manufacture and delivery of a controlled substance, not for possession of a firearm. *Soto*, 2014 IL App (1st) 121937, at ¶ 14. Finding no reason to disagree with *Heller*, *Aguilar*, and *Burns*, and the historical acceptance of the prohibition of firearm possession by felons as an acceptable limitation on the constitutional right to bear arms, the *Soto* court affirmed the defendant's conviction for the Class 2 form of AUUW. *Id.*

¶ 14 We find this line of cases persuasive and affirm defendant's conviction for the Class 2 form of AUUW. We reject defendant's invitation to follow the conflicting opinion from the fourth district of this court in *People v. Campbell*, 2013 IL App (4th) 120635. In *Campbell*, the fourth district reversed the defendant's conviction for the Class 2 form of AAUW because the *Aguilar* court found that the entire section of the statute was unconstitutional on its face and there were no circumstances where it could be validly applied. *Campbell*, 2013 IL App (4th) 120635, at ¶ 14-15.

¶ 15 However, as the State points out, and the *Burns* and *Soto* courts highlighted, the modified *Aguilar* decision specifically emphasized that the "finding of unconstitutionality in this decision is specifically limited to the Class 4 form of AUUW," and the court made "no finding, express or implied, with respect to the constitutionality or unconstitutionality of any other section or subsection of the AUUW statute." *People v. Aguilar*, 2013 IL 112116, ¶ 22, n. 3. Accordingly, for the foregoing reasons, we follow the decisions in *Burns* and *Soto* and affirm defendant's conviction.

¶ 16

III. CONCLUSION

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¶ 17 For the foregoing reasons we affirm the judgment of the circuit court.

¶ 18 Affirmed.