

No. 1-10-1827

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 DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 10636
)	
CHANDRA CRITTENDEN,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Connors and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant's conviction of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3) (West 2008)) was reversed in light of *People v. Aguilar*, 2013 IL 112116.

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Following a jury trial, the defendant, Chandra Crittenden, was convicted of aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008)). The trial court sentenced her to serve two years' probation and ordered her to pay \$635 in fines, fees and costs. On appeal, the defendant claimed that (1) her conviction must be reversed because the

trial court erred in denying her motion to quash her arrest and to suppress evidence that was essential to her conviction, (2) this court should review impounded, confidential reports of complaints against the two arresting officers, which the trial court considered in camera and found were not relevant to the issues at trial, (3) the unlawful use of a weapon statute is unconstitutional, and (4) the order imposing fines and fees must be modified because the trial court improperly ordered her to pay \$20 to the Violent Crime Victims Assistance Fund (725 ILCS 240/10 (c)(2) (West 2008)). On December 5, 2011, in an unpublished order under Supreme Court Rule 23, we affirmed the defendant's conviction and modified her fines. On March 5, 2014, the Illinois Supreme Court issued an order directing us to vacate our order and reconsider the matter in light of *People v. Aguilar*, 2013 IL 112116. Upon reconsideration, we reverse.

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The record reveals that the defendant was arrested on May 27, 2009, when she was found in possession of a firearm. Subsequent to her arrest, she was charged by information with aggravated assault of a police officer with a firearm and aggravated unlawful use of a weapon (720 ILCS 5/12-2(a)(6), 24-1.6(a)(1), (a)(3)(A) (West 2008)).

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At trial, Chicago police officers Kyle Mingari and Ted Jozefczak testified to the following facts. On the evening of May 27, 2009, they were patrolling in the vicinity of 5248 West Chicago Avenue, an area in which they had personally made numerous drug and gun arrests. They were driving an unmarked maroon Ford Crown Victoria with municipal license plates,

and emergency light bars on the front, rear, and rear side windows of the vehicle. Officer Jozefczak was driving, and Officer Mingari was in the front passenger seat. They were dressed in civilian clothing and had their police badges visibly displayed on chains worn around their necks. At approximately 11:30 p.m., they were traveling westbound on Chicago Avenue and saw the defendant standing on the sidewalk in front of a restaurant. Because the defendant appeared to be "loitering" in an area in which the officers had previously made numerous arrests for narcotics and weapons violations, they decided to conduct a field interview "to see what was going on and why she was there." Officer Jozefczak stopped the car near the place where the defendant was standing, and Officer Mingari rolled down his window and asked her name and where she lived. The defendant did not respond to this question, but she looked east and west and then turned and ran eastbound down Chicago Avenue, while holding her hand to the side of her waistband as she ran.

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Officer Mingari exited the vehicle and pursued the defendant on foot, while Officer Jozefczak put the car in reverse and drove east toward the intersection of Chicago and Latrobe Avenues. When the defendant reached the intersection, she turned left, ran north on Latrobe, and then turned left into an alley. Officer Mingari was approximately 15 feet behind the defendant, and identified himself as a police officer as he pursued her. Officer Jozefczak followed them in the police vehicle and turned north onto Latrobe and then west into the alley, where he got out of the car. Officer Mingari again announced his office, but the defendant continued running down the alley until she reached a gate at the rear of the

residential building located at 5248 West Chicago Avenue. As she pulled the gate open and proceeded through it, Officer Mingari caught up to her, pushed her to the ground, and then fell on top of her. He then stood up, pulled the defendant up from the ground, and grabbed her by the shoulder in order to turn her around so that she was facing him. As the defendant turned around, Officer Mingari saw that she was holding a chrome handgun and was pointing it at his chest. He then punched her in the head with his closed fist, causing her head to hit the fence behind her. The gun fell to the ground, and Officer Mingari yelled "gun" to inform Officer Jozefczak of the weapon, which Officer Mingari recovered as Officer Jozefczak put the defendant in handcuffs. Officer Mingari examined the gun and found that it was loaded with five rounds in the magazine, with one round in the chamber.

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According to the police officers, as they escorted the defendant to the police vehicle, she looked up at the windows of the apartment building and yelled, "come down here and get your f***ing gun." After placing her in the rear seat of their car, Officer Mingari informed her of her *Miranda* rights, which she stated she understood. She then told them that she had been holding the gun for her boyfriend and that she ran from them because she knew that holding the gun was illegal.

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Assistant State's Attorney (ASA) Kathleen Kain testified that she interviewed the defendant during the early morning hours after her arrest and that the defendant made a custodial statement in which she admitted that she was holding the gun for her boyfriend. During that

statement, the defendant said that she had received a telephone call from her boyfriend, Tyrone, who told her to go to the sidewalk outside the apartment building at 5248 West Chicago Avenue. There, she met Tyrone, who gave her the gun and told her to hold it for him. As she was standing in front of the apartment building, the police officers drove up and asked her where she lived. ASA Kain further testified that the defendant said she ran to the rear of the apartment building because she thought that her boyfriend would be there and would take responsibility for the gun. According to ASA Kain, the defendant said that she did not see her boyfriend and took the gun out of her waistband, intending to throw it over the gate, but she put it down on the ground because the police had caught up with her. The defendant also said that one of the police officers pushed her and then put her in handcuffs. ASA Kain further stated that the defendant denied ever pointing the gun at the police and that she declined to memorialize her statement in a written document.

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The defendant presented the testimony of her brother, Rosedell Bowman, who stated that in May 2009, he lived in a four-flat apartment building at 811 N. Lockwood on the corner of Chicago Avenue and Lockwood, which is one street over from Latrobe. However, Bowman acknowledged that he had not had any contact with his sister on the night of her arrest, nor did he see or hear any of the events leading up to her arrest.

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Testifying in her own behalf, the defendant stated that she was 19 years old and that she was studying computer engineering in college. She testified that on the night of May 27, 2009,

she visited her grandmother at her home at 933 North Latrobe Avenue. After leaving her grandmother's house at around 11 p.m., she went to a restaurant on Chicago Avenue and placed an order for some food. While her food was being prepared, she decided to wait outside because a group of young men inside the restaurant were rolling marijuana cigarettes, and she did not want to be associated with or bothered by the boys. As she was standing on the sidewalk, a maroon Ford drove up, and one of the men in the car asked her where she lived. The defendant testified that she responded by telling him the name of her street and then started to walk away. According to the defendant, she did not see the police badges or know who the men were, and she decided to go to her brother's house, where she would be safe, because she felt frightened.

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The defendant further testified that, as she turned the corner, she noticed that one of the men was following her and she started to run because she was afraid. The man caught up to her and pushed her, knocking her to the ground, and then fell on top of her. He then pulled her up and struck her in the head, causing her head to hit a fence. As he pulled her up, he said, "spit it out." According to the defendant, she then realized that the man was a police officer and that he suspected that she had drugs in her mouth. The defendant testified that this occurred in the alley behind her brother's apartment building, which was located at 811 North Lockwood, on the opposite end of the block from 5248 West Chicago Avenue.

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The defendant denied having a gun in her possession at all on the night of her arrest and also

denied that she had made any incriminating statements to either the police officers or to ASA Kain. However, she acknowledged that she knew the area of Chicago Avenue near her brother's apartment building was a high-crime area in which there were lots of drugs. In addition, she admitted that she had previously seen cars with municipal plates, which were similar to the vehicle occupied by the two men who approached her on Chicago Avenue, and she knew that the municipal plates designated the vehicles as police cars.

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The jury acquitted the defendant on the charge of aggravated assault of a police officer, but found her guilty of aggravated unlawful use of a weapon. After trial, the court denied the defendant's post-trial motion, sentenced her to serve a term of two years' probation, and ordered her to pay a total of \$635 in fines, fees and costs, including \$20 for the Violent Crime Victims Assistance Fund, \$30 for the Children's Advocacy Center, and \$100 for the Trauma Center Fund.

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The defendant appealed, arguing in part, that the aggravated unlawful use of a weapon statute (AUUW) (720 ILCS 5/24-1.6 (West 2008)) is facially unconstitutional because it infringes on the exercise of her right to bear arms, as guaranteed by the second amendment to the United States Constitution. U.S. Const., amend. II. Whether a statute is constitutional is a question of law to be reviewed *de novo*. *People v. Spencer*, 2012 IL App (1st) 102094, ¶ 23. We agree with the defendant that her AUUW conviction must be reversed on constitutional grounds.

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Section 24-1.6(a) of the Criminal Code of 1961 (Code) provides:

¶ 16 "(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, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another person as an invitee with that person's permission, any pistol, revolver, stun gun or taser or other firearm;"

(2) [and]

(3)

"(3) One of the following factors is present:

(4) (A) the firearm possessed was uncased, loaded and immediately accessible at the time of the offense;" 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010).

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The language of the 2010 version of the AUUW statute is unchanged from the 2008 version which our supreme court held was facially unconstitutional in *People v. Aguilar*, 2013 IL 112116, ¶ 22. In *Aguilar*, the supreme court adopted the reasoning in *Moore v. Madigan*, 702 F.3d 933, 941-42 (7th Cir. 2012), which held that the AUUW statute was a flat ban on carrying guns outside the home and that such a ban violated the right to bear arms under the second

amendment. *Id.*, ¶ 20. Our supreme court stated that the United States Supreme Court has held that the central component of the right to keep and bear arms is individual self-defense and that restricting that right to the home makes little sense as confrontations are not limited to the home. *Id.* (citing *D.C. v. Heller*, 554 U.S. 570, 599 (2008)). The supreme court stated that, while the second amendment protects the right to possess and use a firearm for self-defense outside the home, it was not concluding that "such a right is unlimited or is not subject to meaningful regulation." *Id.*, ¶ 21. However, the court concluded that the AUUW statute was not a reasonable regulation, but a "wholesale statutory ban on the exercise of a personal right that is specifically" guaranteed by the United States Constitution. *Id.* The supreme court, therefore, reversed the defendant's AUUW conviction as the statute was facially unconstitutional. *Id.* ¶ 22. Likewise, in this case, the defendant was convicted under a facially unconstitutional statute, and therefore, we must reverse her AUUW conviction.

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For the foregoing reasons, we reverse the defendant's conviction upon reconsideration of the matter in light of *People v. Aguilar*, 2013 IL 112116.

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Reversed.