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SIXTH DIVISION
May 23, 2014

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. 10 CR 5802
)	
MARCELLUS FRENCH,)	The Honorable
)	Mary Margaret Brosnahan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Defendant's conviction for aggravated unlawful use of a weapon pursuant to section 24-1.6(a)(1), (a)(3)(A) is unconstitutional following *People v. Aguilar*, 2013 IL 112116 and must be reversed. However, defendant's conviction for aggravated unlawful use of a weapon for failing to present a valid Firearm Owner's Identification Card pursuant to section 24-1.6(a)(1), (a)(3)(C) is constitutional and remains valid.

¶2 Pursuant to a supervisory order, we have been instructed to reconsider our prior decision in this case in light of *People v. Aguilar*, 2013 IL 112116. Defendant, Marcellus

French, was found guilty following a bench trial of two counts of aggravated unlawful use of a weapon (AUUW): (1) for knowingly carrying on or about his person a firearm, when he was not on his own land, abode or fixed place of business, and that firearm 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)); and (2) for knowingly carrying on or about his person a firearm, when he was not on his own land, abode or fixed place of business, where he had not been issued a currently valid Firearm Owner's Identification Card (FOID) (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2010)). The counts were merged pursuant to the one-act, one-crime rule and defendant was sentenced to one-year imprisonment. Defendant's sentence has been served. On appeal, defendant contends his convictions for AUUW are unconstitutional as a result of *Aguilar*. Based on the following, we reverse one of defendant's convictions, affirm the remaining conviction, and remand for resentencing.

¶3 The trial testimony demonstrated that defendant was observed outside of a building carrying a handgun in his waistband. When officers attempted to approach defendant, he gave chase and entered the building. Defendant was apprehended inside an apartment within the building. The officers recovered an uncased, loaded 9 millimeter handgun with an extended magazine on defendant's person. Defendant failed to produce a FOID card.

¶4 The State agrees that defendant's conviction under section 24-1.6(a)(1), (a)(3)(A) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010)) must be reversed as unconstitutional pursuant to the supreme court's decision in *Aguilar*. Defendant, however, contends that his AUUW conviction for carrying a firearm without a currently valid FOID card must also be reversed based upon *Aguilar*. In his reply brief, defendant argued that his

conviction for failing to carry a valid FOID card must be reversed because the relevant subsection of the statute cannot be severed from the subsection struck by *Aguilar* and, in the alternative, the subsection unconstitutionally restricts an individual's right to bear arms for his own defense. Defendant has violated Illinois Supreme Court Rule 341(h)(7) and, therefore, waived consideration of his arguments. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("Points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing. ").

¶5 Waiver aside, defendant's arguments have been raised and rejected by this court in *People v. Henderson*, 2013 IL App (1st) 113294. In *Henderson*, this court concluded that the removal of subsection (a)(1), (a)(3)(A) by application of *Aguilar* " 'undermines neither the completeness nor the executability of the remaining subsections.' " *Id.* at ¶ 26; see also *id.* at ¶ 22 (quoting *People v. Sanders*, 182 Ill. 2d 524, 534 (1998)). In so finding, this court stated:

"From our reading of the aggravated UUV statute as a whole [citation], we find that the invalidity of subsection (a)(3)(A) by *Aguilar* is not fatal to the balance of the statute, particularly the FOID card requirement in subsection (a)(3)(C) ***. Although *Aguilar* did not expressly pass on the issue of whether subsection (a)(3)(A) is severable from the balance of the statute, we are mindful of our obligation to uphold legislative enactments whenever reasonably possible, and we believe that subsections (a)(1), (a)(2), and the remaining factors in subsection (a)(3) can stand independently of subsection (a)(3)(A), which is only one of several factors that operate in conjunction with subsection (a)(1) or (a)(2)

to comprise the substantive offense. [Citation]." *Henderson*, 2013 IL App (1st) 113294, ¶ 22.

¶6 Moreover, this court reiterated the consistent recognition that the Illinois legislature can implement sensible restrictions on gun ownership without running afoul of the second amendment. *Id.* at ¶ 24 (citing *Aguilar*, 2013 IL 112116, ¶ 21-22, *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008)) ("nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms"), *Moore v. Madigan*, 702 F.3d 933, 941 (7th Cir. 2012) (the Illinois legislature could "sensibly require that an applicant for a handgun permit establish his competence in handling firearms. A person who carries a gun in public but is not well trained in the use of firearms is a menace to himself and others.").

¶7 This court additionally considered the facial constitutionality of subsection (a)(1), (a)(3)(C). Ultimately, in *Henderson*, this court concluded that defendant failed to rebut the presumptive constitutionality of the statute. *Henderson*, 2013 IL App (1st) 113294, ¶ 29-35 (citing *Coram v. State*, 2013 IL 113867, ¶ 58). Defendant similarly has failed to rebut the presumptive constitutionality of the statute here and, therefore, we will not depart from the well-reasoned opinion in *Henderson*.

¶8 In sum, we conclude that section 24-1.6(a)(1), (a)(3)(C) remains constitutional. Accordingly, we reverse defendant's conviction pursuant to section 24-1.6(a)(1), (a)(3)(A) and affirm defendant's conviction pursuant to section 24-1.6(a)(1), (a)(3)(C).

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Upon the authority provided by Illinois Supreme Court Rule 615(b)(2), we remand this cause to the trial court for sentencing on defendant's remaining conviction.

¶9 Reversed in part; affirmed in part; remanded for sentencing.