

No. 1-12-1645

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except under the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS)	Appeal from
)	the Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	No. 11 CR 1817
)	
RONALD CROSBY,)	Honorable Domenica A. Stephenson
)	Judge Presiding
Defendant-Appellant.)	

JUSTICE MASON delivered the judgment of the court, with opinion.
Presiding Justice Hyman and Justice Pucinski concurred in the judgment and opinion.

ORDER

¶ 1 Defendant, Ronald Crosby (Crosby) was charged with the offenses of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)), and four counts of unlawful use of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2010)) (UUWF). The information charging the armed habitual criminal offense cited two prior felonies: a 2000 conviction for Class 4 aggravated unlawful use of a weapon (AUUW) and a 2003 conviction for aggravated battery of a police officer. The parties entered into a stipulation regarding the two prior felonies. After a jury trial,

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defendant was convicted on the armed habitual criminal charge and sentenced to eight years in the Illinois Department of Corrections. Crosby was acquitted on the UUWF charges.

¶ 2 Crosby timely appealed raising a number of claimed trial errors. In the interim, our supreme court decided *People v. Aguilar*, 2013 IL 112116, which declared the Class 4 version of the AUUW statute, (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008), unconstitutional as a violation of the second amendment's right to bear arms. The parties filed supplemental briefs addressing *Aguilar's* impact on this case. Because we find this issue dispositive, we need not discuss the underlying factual basis for Crosby's conviction or address the other issues raised by Crosby on appeal.

¶ 3 A person commits the offense of being an armed habitual criminal when "he or she receives, sells, possesses, or transfers any firearm after having been convicted" of two qualifying offenses. 720 ILCS 5/24-1.7 (West 2010). The qualifying offenses are elements of the armed habitual criminal offense and, like the other elements, must be proved by the State beyond a reasonable doubt. *People v. Owens*, 37 Ill. 2d 131, 132 (1967); *People v. Davis*, 405 Ill. App. 3d 585, 597 (2010).

¶ 4 When a statute is declared unconstitutional, it is void *ab initio*; it is as though the law had never been passed. *People v. Tellez-Valencia*, 188 Ill. 2d 523, 526 (1999). Thus, when *Aguilar* determined that the Class 4 version of AUUW was unconstitutional, one of the predicate offenses for Crosby's armed habitual criminal conviction was likewise rendered void. *Id.* ("Each defendant's charging instrument thus failed to state an offense because the statute under which each was charged and prosecuted was not in effect when the alleged offenses occurred.") As this

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court has noted in a similar case, "[a] void conviction for the Class 4 form of AUUW found to be unconstitutional in *Aguilar* cannot now, nor can it ever, serve as a predicate offense for any charge." *People v. Fields*, 2014 IL App (1st) 110311 ¶ 44. Thus, Crosby's armed habitual criminal conviction must be reversed outright.

¶ 5 Reversed.