

No. 1-12-1648

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 16132
	)	
MARANDA MORGAN,	)	Honorable
	)	Arthur R. Hill, Jr.,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE HOWSE delivered the judgment of the court.  
Justices Lavin and Epstein concurred in the judgment.

**O R D E R**

¶ 1 *Held:* (1) Two aggravated unlawful use of a weapon (AUUW) convictions are reversed because the pertinent portions of the statute violate the constitutional right to keep and bear arms; (2) a conviction on a third count is reversed because no distinction exists between the unconstitutional portions of the statute and the subsection prohibiting carrying a weapon on a public street; and (3) defendant's conviction on

1-12-1648

one count of AUUW is affirmed because additional counts violate the one-act, one-crime rule.

¶ 2 Following a bench trial in 2012, defendant Maranda Morgan was convicted of six counts of aggravated unlawful use of a weapon (AUUW) pursuant to various subsections of the AUUW statute (720 ILCS 5/24-1.6 (West 2010)). On appeal, defendant contends the court must vacate each of her convictions because the AUUW statute violates her individual right to bear arms as guaranteed by the second amendment to the United States Constitution (U.S. Const., amend. II). During the pendency of defendant's appeal, the Illinois Supreme Court in *People v. Aguilar*, 2013 IL 112116, *reh'g denied*, (Dec. 19, 2013), held that one subsection of the AUUW statute was facially unconstitutional because it represents a statutory ban on weapons possession. In light of *Aguilar* and for the reasons that follow, we affirm defendant's conviction on one AUUW count.

¶ 3 The evidence at trial established that a Chicago police officer observed defendant throw a handgun out of a moving car. Chicago police officer J.D. Doskocz testified that at about 1 a.m. on September 18, 2011, he and his partner were in a marked squad car patrolling the area of Princeton and 54th Street in Chicago.

¶ 4 Officer Doskocz observed a silver Impala commit a traffic violation as it passed the police car in the opposite direction. The officers followed the Impala to a gas station and saw that two men were sitting in the front seat of the vehicle and two women were in the back seat. As the officers approached the Impala, Officer Doskocz shouted, "Turn off the car." The driver

1-12-1648

of the Impala drove out of the gas station parking lot, and the officers pursued the Impala in their squad car for about four minutes. During the pursuit, Officer Doskocz saw defendant, who was sitting in the back seat of the vehicle, toss a firearm out of the window. Defendant was apprehended and arrested after the car was stopped.

¶ 5 Chicago police officer Fred Hasenfeng testified that he heard radio reports of the pursuit and observed a silver Impala being pursued by a squad car. Officer Hasenfeng saw a female passenger throw a gun out of the car window and into an alley. The officer's partner recovered a revolver from the alley. The State introduced into evidence a certified public record that defendant had never been issued a Firearm Owner's Identification (FOID) card.

¶ 6 Defendant was convicted of six separate charges of AUUW, which requires both the carrying of a firearm in a proscribed place and the presence of a designated statutory factor. Count 1 charged defendant with carrying a firearm *on her person* while not on her land, abode or place of business (720 ILCS 5/24-1.6(a)(1) (West 2010)) and the firearm was uncased, loaded and immediately accessible (720 ILCS 5/24-1.6(a)(3)(A) (West 2010)). Count 2 charged defendant with carrying a firearm *on her person* while not on her land, abode or place of business (720 ILCS 5/24-1.6(a)(1) (West 2010)) and she had not been issued a valid FOID card (720 ILCS 5/24.1.6(a)(3)(C) (West 2010)).

¶ 7 Count 3 charged defendant with carrying a firearm on her person *on a public alley* (720 ILCS 5/24-1.6(a)(2) (West 2010)) and the firearm was uncased, loaded and immediately

1-12-1648

accessible (720 ILCS 5/24-1.6(a)(3)(A) (West 2010)). Count 4 charged defendant with carrying a firearm on her person *on a public alley* (720 ILCS 5/24-1.6(a)(2) (West 2010)) and she had not been issued a valid FOID card (720 ILCS 5/24-1.6(a)(3)(C) (West 2010)).

¶ 8 Count 5 charged defendant with carrying a firearm *in any vehicle* (720 ILCS 5/24-1.6(a)(1) (West 2010)) and the firearm was uncased, loaded and immediately accessible (720 ILCS 5/24-1.6(a)(3)(A) (West 2010)). Count 6 charged defendant with carrying a firearm *in any vehicle* (720 ILCS 5/24-1.6(a)(1) (West 2010)) and she had not been issued a valid FOID card (720 ILCS 5/24-1.6(a)(3)(C) (West 2010)).

¶ 9 Each of the six counts is a Class 4 felony. 720 ILCS 5/24-1.6(d)(1) (West 2010). The court imposed six one-year terms in prison, to be served concurrently.

¶ 10 In *Aguilar*, the defendant was convicted of the Class 4 felony of carrying a loaded and immediately accessible weapon on or about his person under section 24-1.6(a)(1), (a)(3)(A). *Aguilar*, 2013 IL 112116, at ¶¶ 4-7. The supreme court found those statutory sections facially unconstitutional because they criminalize conduct that is protected by the second amendment, namely a person's right to keep and bear arms for self-defense inside or outside the home. *Id.* at ¶¶ 20-21. Thus, the supreme court in *Aguilar* reversed the defendant's AUUW conviction. *Id.* at ¶ 22.

¶ 11 In the instant case, defendant contends that pursuant to *Aguilar*, this court must vacate her convictions on all six counts of AUUW. We first note that defendant's convictions on Counts 1

1-12-1648

and 5 are based on section 24-1.6(a)(1), (a)(3)(A), which is the statutory section the supreme court found unconstitutional in *Aguilar*. *Id.* at ¶¶ 20-21. The State concedes that defendant's convictions on those counts cannot stand. Accordingly, defendant's convictions on Counts 1 and 5 are reversed.

¶ 12 Defendant next argues that this court also must reverse her conviction on Count 3 for carrying or possessing a loaded and immediately accessible firearm on her person on a public street pursuant to section 24-1.6(a)(2), (a)(3)(A). She argues that no "legal or logical distinction" exists between her convictions under Counts 1 and 5 for carrying a loaded and immediately accessible firearm while not on her land or while in a vehicle pursuant to section 24-1.6(a)(1), (a)(3)(A), and her conviction under Count 3 for carrying a firearm on a public street under section 24-1.6(a)(2), (a)(3)(A).

¶ 13 The State does not address defendant's position regarding the "public street" portion of the AUUW statute but instead asserts that it is unnecessary to reach that argument because defendant's conviction on one of the remaining counts (Count 2) should be affirmed. We agree with defendant that no cognizable difference exists between the conduct described in those two subsections of the statute. If, under *Aguilar*, a person cannot be barred from carrying a loaded and accessible firearm while in a vehicle, it is illogical that the same conduct could be punishable when the putative offender travels in his or her vehicle and thus carries a firearm on a public

1-12-1648

street. The State offers no reasoning to counter this conclusion. Accordingly, defendant's conviction on Count 3 is reversed.

¶ 14 Turning to the remaining three counts, defendant was charged in Counts 2, 4 and 6 with possessing a firearm outside her home and on a public way without a valid FOID card, in violation of sections 24-1.6(a)(1), (a)(3)(C) and (a)(2), (a)(3)(C). Defendant contends her convictions on all three counts must be reversed because subsection (a)(3)(C), which criminalizes the described conduct when the person possessing the firearm lacks a FOID card, cannot be severed from the statutory subsections that were found unconstitutional in *Aguilar*. *Aguilar*, 2013 IL 112116, at ¶ 21.

¶ 15 This court has addressed the severability of the FOID portion of the AUUW statute and has rejected defendant's position. *People v. Henderson*, 2013 IL App (1<sup>st</sup>) 113294, ¶ 22. In determining severability, a court considers both whether the valid and invalid portions of a statute are "essentially and inseparably connected in substance" and whether the legislature would have enacted the valid portion of the statute without the invalid portion. *Id.*, citing *People v. Alexander*, 204 Ill. 2d 472, 484 (2003). *Henderson* held that the invalidity of subsection (a)(3)(A) under *Aguilar* did not render the balance of the statute unconstitutional. *Id.* The *Henderson* court reasoned that subsection (a)(3)(A) (the act of carrying a loaded and accessible firearm) represented only one of several factors that combine with subsection (a)(1) (carrying a firearm on the defendant's person or in an vehicle when not on his or her own land or place of

1-12-1648

business) and subsection (a)(2) (carrying or possessing a firearm on any public street) to regulate the possession of firearms and that the invalidation of subsection (a)(3)(A) by *Aguilar* did not render the rest of the statute incomplete or incapable of execution. *Id.*, citing *People v. Sanders*, 182 Ill. 2d 524, 534 (1998). Under the reasoning set out in *Henderson*, we reject defendant's assertion that the FOID portions of the statute are unseverable from the provisions found unconstitutional in *Aguilar*.

¶ 16 In addition, the severability of the FOID provision in the statute was recently employed in *People v. Campbell*, 2013 IL App (4th) 120635. The defendant in *Campbell* was convicted of AUUW under subsection (a)(3)(A), which was invalidated by *Aguilar*; however, because the jury also had found defendant guilty of an FOID offense under subsection (a)(3)(C), this court remanded for the trial court to enter a conviction and sentence on that count. *Campbell*, 2013 IL App (4th) 120635, ¶ 16.

¶ 17 The State acknowledges that of the remaining three counts (Counts 2, 4 and 6), a conviction on only one of those counts may stand. The one-act, one-crime doctrine prohibits multiple convictions when they are carved from the same physical act. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010). The evidence at trial established the charges against defendant were based on the single act of throwing one handgun from a vehicle. If a defendant is convicted of two offenses based on the same, single physical act, the court must vacate the less serious offense. *Id.* In determining which offense is the most serious, a reviewing court compares the relative

1-12-1648

punishments prescribed by the legislature for each offense. *People v. Artis*, 232 Ill. 2d 156, 170 (2009).

¶ 18 Here, each AUUW count against defendant was a Class 4 felony. See 720 ILCS 5/24-1.6(d)(1) (West 2010). A Class 4 felony is generally subject to a sentence of one to three years in prison or a period of probation of up to 30 months. 730 ILCS 5/5-4.5-45(a), (d) (West 2010). The penalty provision of the AUUW statute in section (d)(2) provides for a mandatory minimum prison sentence of one year for a first AUUW offense by a person age 18 or older where both of the aggravating factors of subsections (A) and (C) are present (the firearm was uncased, loaded and immediately accessible at the time of the offense and the defendant lacked a valid FOID card). 720 ILCS 5/24-1.6(d)(2) (West 2010). Here, however, the aggravating factor in subsection (A) was not charged in Counts 2, 4 or 6.

¶ 19 When studying the elements of the three remaining counts, we find that each count involves the elements of defendant carrying a firearm in a particular place (on her person, in a public alley or in a vehicle) without a FOID card. Each count involves the same weapon. We cannot say any of those counts is less serious than another. See *Artis*, 232 Ill. 2d at 172 (where there are multiple convictions for the same offense based upon the same physical act, none of the offenses are more serious than any other for purposes of the one-act, one-crime rule).

¶ 20 In similar circumstances, this court has remanded for the trial court to determine the more serious offense. *Id.* at 170. In the instant case, however, we conclude that remandment is not

1-12-1648

necessary because each AUUW count is a Class 4 felony and the trial court clearly found each AUUW count stood on equal footing when it imposed the same prison term (one year) on each count and provided that the terms would be served concurrently. Notably, a one-year term is the minimum prison sentence applicable to a Class 4 felony which provides for a general sentencing range of one to three years. 730 ILCS 5/5-4.5-45(a) (West 2010). Given that only one conviction can stand under the one-act, one-crime doctrine, and the three remaining counts (Counts 2, 4, and 6) are all Class 4 felonies premised on the underlying act of possessing a firearm without having been issued a valid FOID card, we order defendant's mittimus to be amended to reflect a conviction for AUUW on Count 2 only. See *People v. Gordon*, 378 Ill. App. 3d 626, 642 (2007).

¶ 21 Defendant's remaining claims of error involve the imposition of fines and fees. Defendant contends, and the State correctly agrees, that the \$100 Trauma Fund fine does not apply to AUUW convictions because the statute enacting that fine (730 ILCS 5/5-9-1.10 (West 2010)) specifies that the Trauma Fund assessment applies to convictions under sections 24-1.1, 24-1.2 or 24-1.5 of the Criminal Code (720 ILCS 5/24-1.1, 24-1.2, 24-1.5 (West 2010)). Here, that fine is inapplicable because defendant was not convicted under any of those statutory sections but instead was convicted under section 24-1.6 of the Code (720 ILCS 5/24-1.6 (West 2010)). Therefore, the \$100 Trauma Fund fine that was imposed against defendant is vacated.

1-12-1648

¶ 22 Defendant also argues that the \$30 Children's Advocacy Center fine (55 ILCS 5/5-1101(f-5) (West 2010)) imposed against her should have been offset by the \$5-per-day credit for each day defendant spent in presentence custody. The State agrees that the Children's Advocacy Center fine was omitted from the calculation of that credit and that the monetary judgment against defendant should be reduced by \$30. Accordingly, defendant's fines and fees should be reduced by a total of \$130.

¶ 23 In conclusion, defendant's convictions on Counts 1, 3 4, 5 and 6 are reversed. Defendant's conviction on Count 2 is affirmed. In addition, the fines and fees order is to be corrected to reflect the correct amount of fines, fees and costs imposed as \$625, as reduced from the prior total of \$755.

¶ 24 Affirmed in part as modified, reversed in part and vacated in part.