

No. 1-13-1647

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
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 12 CR 16095
)	
CHRISTOPHER CHAVEZ,)	Honorable
)	Maura Slattery-Boyle,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

O R D E R

¶ 1 *Held:* Unlawful possession of a firearm by a felon statute is constitutional under the Second Amendment; \$5 court system fee vacated; seven-year prison sentence for possession of cannabis reduced to five years' imprisonment; mittimus correctly reflects the offenses of which defendant was convicted; judgment affirmed in all other respects.

¶ 2 Following a bench trial, defendant Christopher Chavez was convicted of two counts of unlawful possession of a weapon by a felon and one count of possession of cannabis and sentenced to three concurrent terms of seven years' imprisonment. On appeal, he contends that

his convictions for unlawful possession of a weapon by a felon violate his constitutional right to keep an operable firearm in defense of one's home. He also requests this court to vacate the \$5 court system fee, reduce his seven-year sentence on the possession of cannabis charge because it is beyond the maximum applicable sentence, and to correct the mittimus to reflect the correct name of the offense of unlawful possession of a weapon by a felon.

¶ 3 At trial, Cook County Sheriff's Department Deputy Scott Hunter testified that on August 16, 2012, he went to the first floor apartment at 1903 North Mozart Street in Chicago to execute a court-ordered eviction, which required him to remove the occupants of the home and give possession of the home back to the owner. The occupants listed in the court-ordered eviction were defendant, Melissa M. Santana and unknown occupants. He arrived at the Mozart address with three other deputies, Wanda Soto, Nefty Calone and Dave Soto. When Deputy Hunter entered the apartment, he saw a juvenile and two men, including defendant, who was coming out of the back bedroom of the apartment.

¶ 4 Deputy Dave Soto testified that he saw defendant exit a bedroom and close the door. Deputy Soto entered the bedroom to secure the apartment, and observed part of a handgun sticking out between two mattresses. He recovered the handgun, and also recovered live rounds on top of the nightstand next to the bed as well as a large bag containing suspect cannabis. Deputy Soto further testified defendant told him that he forgot the gun was in his bedroom and kept it for protection. Defendant also said he forgot the cannabis was in the room, and he used to sell it to make ends meet. At the police station, defendant spoke to Deputy Dave Soto with Deputy Wanda Soto present, and admitted that the gun and cannabis belonged to him, but that he had the gun for his protection.

¶ 5 The parties then stipulated that defendant was never issued a Firearm Owner's Identification Card (FOID). The parties further stipulated that defendant had two prior felony convictions involving narcotics, and that the recovered suspect cannabis tested positive for cannabis and weighed 55.1 grams.

¶ 6 At the close of evidence, the court found defendant guilty of possession of cannabis and two counts of unlawful possession of a weapon by a felon for the handgun and the ammunition. The court imposed three concurrent seven-year prison terms.

¶ 7 On appeal, defendant contends that the unlawful possession of a firearm by a felon statute (720 ILCS 5/24-1.1(a) (West 2012)) is unconstitutional because it violates the second amendment right to keep an operable firearm in defense of his home. U.S. Const. amend. II. He further maintains that the statute is unconstitutional as applied to him because his prior felony convictions were non-violent and he kept the handgun for protection.

¶ 8 Defendant did not raise this issue below, but a constitutional challenge to a statute can be raised at any time. *In re J.W.*, 204 Ill. 2d 50, 61 (2003). All statutes are presumed to be constitutional, and the burden for rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. *People v. Rush*, 2014 IL App (1st) 123462, ¶10. We review the constitutionality of a statute *de novo*. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 9 Defendant's position has no merit based on the decisions by the United States Supreme Court, the Illinois Supreme Court and the Illinois Appellate Court. The Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 592, 599-600, 635 (2008), held that the Second Amendment guarantees the individual right to keep and bear arms, that the central component of the right is the right of armed self-defense, particularly in one's home, and that a ban of

possession of a gun in the home violates the Second Amendment. The Supreme Court, however, further found that the right to bear arms was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. *Heller*, 554 U.S. at 626. The *Heller* court concluded that the core of the second amendment protection was the right of law-abiding, responsible citizens to use arms in defense of hearth and home. Accordingly, the Supreme Court stated that its opinion does not cast doubt on longstanding prohibitions on, *inter alia*, the possession of firearms by felons. *Heller*, 554 U.S. at 626-27, 635; see also *McDonald v. City of Chicago, Illinois*, 561 U.S. 742, 786 (2010) (reiterating that its holding did not impact the restrictions on firearm possession by felons).

¶ 10 In accordance with the principles articulated in *Heller* and *McDonald*, the Illinois Supreme Court voiced its approval of felon-based firearm bans in *People v. Aguilar*, 2013 IL 112116, ¶26.

¶ 11 Subsequently, this court rejected defendant's facial and as-applied constitutional challenge to the unlawful use of a weapon by a felon statute in *People v. Garvin*, 2013 IL App (1st) 113095.

¶ 12 Likewise, in *People v. Rush*, 2014 IL App (1st) 123462, ¶ 23, we found *Garvin* to be well-reasoned, and thorough and adopted it. This court further observed in *Rush* that the UUWF statute has been consistently upheld as constitutional. *Rush*, 2014 IL App (1st) 123462, ¶24 (see cases cited therein).

¶ 13 Also in *People v. Campbell*, 2014 IL App (1st) 112926, ¶59, this court noted that *Heller* and *McDonald* explicitly state that the regulation of the use and possession of firearms is not categorically prohibited, and, specifically, that laws may prohibit felons from possessing firearms. This court concluded, in line with *Garvin*, that felon-based firearm bans, like the

UUWF statute, do not impose a burden on conduct falling within the scope of the second amendment, and rejected the constitutional challenge to that statute. *Campbell*, 2014 IL App (1st) 112926, ¶60.

¶ 14 Defendant, however, relies on federal district court cases as well as other state jurisdictions to support his contention that the unlawful possession of a firearm by a felon statute is unconstitutional. Defendant's reliance on federal district court cases is misplaced because they have no precedential value in this court. *People v. High Tower*, 172 Ill. App. 3d 678, 691 (1988). Moreover, this court in *Garvin* noted numerous federal cases that rejected such constitutional challenges. *Garvin*, 2013 IL App (1st) 113095, ¶¶2, n.1, 32. Most notably, defendant's reliance on federal authority and authorities from other states is neither persuasive nor relevant here because we have Illinois law on point in *Aguilar*, *Garvin*, *Rush*, and *Campbell*. "Only in the absence of Illinois authority on the point of law in question are we to look to other jurisdictions for persuasive authority." *Allstate Insurance Co. v. Lane*, 345 Ill. App. 3d 547, 552 (2003).

¶ 15 We further find that the statute is not unconstitutional as applied to defendant because his prior felonies were non-violent. Defendant's as applied challenge fails where the unlawful possession of a weapon by a felon statute does not provide any exceptions for persons convicted of nonviolent felonies. 720 ILCS 5/24-1.1(a) (West 2012). Furthermore, no such exception was recognized by the Supreme Court in *Heller* and *McDonald*. *People v. Spencer*, 2012 IL App (1st) 102094, ¶32. In line with the First District cases that rely on these Supreme Court cases, we find that the unlawful possession of a firearm by a felon statute is not unconstitutional.

¶ 16 Defendant next contends, the State concedes and we agree that the \$5 court systems fee should be vacated because it only applies to motor vehicle offenses. 55 ILCS 5/5-1101(a) (West 2012). Defendant here was not convicted of such offenses, and accordingly, we vacate this fee.

¶ 17 Defendant next contends, the State concedes and we agree that his sentence of seven years' imprisonment for possession of cannabis, a Class 3 non-extended offense, exceeded the maximum term of five years' imprisonment. 720 ILCS 550/4(d) (West 2012); 730 ILCS 5/5-4.5-40(a) (West 2012). We, accordingly, reduce defendant's sentence for the possession of cannabis to five years' imprisonment. Ill. S. Ct. Rule 615(b)(4) (eff. April 1, 2015).

¶ 18 Finally, defendant contends that this court should correct the mittimus to accurately reflect that he was convicted of unlawful possession of a weapon by a felon. We observe that the mittimus indicates that defendant was convicted of "Felon Poss/Use Firearm Prior." Defendant asserts that the listed offense should not include the word "Use."

¶ 19 This court rejected a similar argument in *People v. Polk*, 2014 IL App (1st) 122017, ¶33. In that case, this court observed that defendant, as in this case, was tried and convicted for violation of section 24-1.1 of the Criminal Code of 2012 (720 ILCS 5/24-1.1 (West 2012)), and the offense defined in that section is entitled, "Unlawful Use or Possession of Weapons by Felons or Persons in Custody of the Department of Corrections Facilities." Given that language used to denote defendant's conviction adheres to the title of statute itself, it was correct to allow the mittimus to be labeled with this same term. *Polk*, 2014 IL App (1st) 122017, ¶33. We agree, and, accordingly, find the mittimus does not need to be corrected.

¶ 20 Defendant, however, contends that the holding in *Polk* conflicts with the well-established principle that a defendant's mittimus should specifically reflect only the crime for which he was

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convicted. The mittimus, however, does that in this case, as it correctly states the statute under which defendant was tried and convicted. Accordingly, we find no error.

¶ 21 In sum, we find that the unlawful possession of a weapon by a felon statute is not unconstitutional under the second amendment. We also vacate the \$5 court system fee, and reduce defendant's sentence on the possession of cannabis conviction to five years' imprisonment. We further find that the mittimus correctly states defendant's convictions, and affirm the judgment in all other respects.

¶ 22 Affirmed in part; modified in part; vacated in part.