

No. 1-13-3193

**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. 12 CR 15750
	)	
MARKUS SPIERS,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Presiding Justice Simon and Justice Pierce concurred in the judgment.

**O R D E R**

- ¶ 1 *Held:* Pursuant to *People v. Fields*, 2014 IL App (1st) 130209, defendant's conviction for aggravated unlawful use of a weapon is affirmed because defendant failed to prove, by a preponderance of the evidence, that he was entitled to the invitee exception.
- ¶ 2 Following a bench trial, defendant Markus Spiers was found guilty of aggravated unlawful use of a weapon (AUUW) and sentenced to four years in prison. On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt because the State failed to establish at trial that he was not a social invitee at the address where he was arrested. We affirm.

¶ 3 Defendant's arrest and prosecution arose from an August 14, 2012 incident during which a Chicago police officer saw him with a firearm. Defendant was charged via information with two counts of AUUW and two counts of unlawful use or possession of a weapon by a felon.

¶ 4 At trial, Officer Huberts testified that he and his partner were on a "gun suppression mission" at around 11 p.m. when they observed a vehicle obstructing traffic. The officers parked and approached the vehicle, and when they did so, they discovered that it was empty. There was a group of three individuals, including defendant, to the west of the parked car. Defendant and another person were at the bottom of the stairs at 8614 South Morgan and another man was outside the front gate.

¶ 5 As Officer Huberts approached this group, he saw defendant stand up, place a gun on the porch stairs, and walk into the residence. The first time Officer Huberts saw the gun, defendant's hand was on the gun and the gun itself was on the porch. Officer Huberts went through the gate, up the stairs, and recovered the gun, a .380 Bersa containing eight live rounds. At the same time, defendant was being pushed out of the residence. Officer Huberts took defendant into custody and transported him to a police station for processing. During processing, defendant indicated that his address was 8525 South Morgan and that his date of birth was November 20, 1986. During cross-examination, Officer Huberts admitted that he only saw defendant with the gun for a few seconds.

¶ 6 The State entered into evidence a certified Firearm Owner's Identification letter stating that Markus Spiers, with a birth date of November 20, 1986, had not been issued a Firearm Owner's Identification card as of September 25, 2012. The State also admitted a certified copy of defendant's 2009 theft conviction.

¶ 7 Defendant testified that 8614 South Morgan was where "Beth" and a couple of his friends "stayed." He was on the porch with two other men and a third man was outside the gate when officers approached and asked who owned the car in the street. Defendant got up to get the owner, who was inside the house. When he came back out, the other two men were handcuffed and the officers asked whether defendant was going to let them be locked up for his gun. Although defendant denied that the gun was his, the officers did not believe him and he was arrested.

¶ 8 Defendant denied having a gun or touching a gun, but admitted that a gun was on the porch. The gun was on the porch when he arrived and he did not know where it came from. The gun was under a plastic bag, but he could see the top and butt of the gun. Based on its placement, however, the gun was not visible from the bottom of the stairs.

¶ 9 In finding defendant guilty of all charges, the trial court stated that the officer was very clear in that he saw defendant stand up, place a gun on the porch, and walk inside. The court also noted that the officer was candid when he admitted that he only briefly saw defendant's hand on the gun. The court also found defendant's version of events was not credible. The trial court "merged" the convictions, and sentenced defendant to four years in prison for AUUW.

¶ 10 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt of AUUW because the State failed to prove that he was not a social invitee with permission to have a firearm at the address where he was arrested. The State responds that it was defendant's burden to raise and prove the invitee exception and that the evidence in this case established that defendant was proven guilty beyond a reasonable doubt of AUUW.

¶ 11 Thus, the question before this court is whether defendant's alleged status or lack thereof, that of a social invitee with permission to carry a firearm, is an element of the offense of AUUW that must be proved beyond a reasonable doubt by the State.

¶ 12 A reviewing court's primary objective when construing a statute is to ascertain and give effect to the legislative intent, and the surest and most reliable indicator of that intent is the plain and ordinary meaning of the statute's language. *People v. Chapman*, 2012 IL 111896, ¶ 23.

Where the language of a statute is clear and unambiguous, this court will apply the statute as written. *Id.*

¶ 13 Here, defendant was convicted of two counts of aggravated unlawful use of a weapon in that he, having previously been convicted of a felony, knowingly carried on or about his person, a firearm, when he was not on his own land or in his own abode, legal dwelling, or fixed place of business, or on the land or in the legal dwelling of another as an invitee with that person's permission when (1) the firearm was uncased, loaded and immediately accessible (see 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d)(3) (West 2012)), and (2) he had not been issued a currently valid Firearm Owner's Identification card (see 720 ILCS 5/24-1.6(a)(1), (a)(3)(C), (d)(3) (West 2012)).

¶ 14 Although neither party cites *People v. Fields*, 2014 IL App (1st) 130209, that case rejected the argument that the invitee exception is an element of AUUW that must be disproved by the State, and determined that the invitee exception is just that, an exception that must be proved by the defendant by a preponderance of the evidence.

¶ 15 In *Fields*, the court analyzed the relationship between the AUUW statute and section 24-2 of the Code (720 ILCS 5/24-2 (West 2010)), which lists the exemptions that apply to certain provisions of the AUUW statute. The court noted that when the invitee provision was added to

the AUUW statute, the invitee provision was also added to the exemptions listed in section 24-2. *Fields*, 2014 IL App (1st) 130209, ¶ 35. Specifically, section 24-2(b)(5) of the Code stated that the AUUW statute does not apply when a person has, *inter alia*, a firearm " 'on the land or in the legal dwelling of another person as an invitee with that person's permission.' " *Id.*, quoting 720 ILCS 5/24-2(b)(5) (West 2010). However, section 24-2(h) also states that a " 'defendant shall have the burden of proving such an exemption.' " *Id.*, quoting 720 ILCS 5/24-2(h) (West 2010). Thus, the court determined that the plain language of sections 24-2(b)(5) and 24-2(h) of the Code established that the General Assembly intended a defendant to bear the burden of proving by a preponderance of the evidence that he was entitled to the invitee exemption. *Id.*, ¶ 37; see also *People v. Smith*, 71 Ill. 2d 95, 105-06 (1978) (when the legislature intends for a provision to be a affirmative defense, it labels that provision as such, had it intended to classify certain exemptions as affirmative defenses, it would have labeled them as such).

¶ 16 The *Fields* court therefore rejected that defendant's argument that the State must prove that he was not an invitee because the commission of the offense of AUUW does not depend on whether one is an invited guest; rather, it removes those defendants who are invited guests from "liability" under the statute. *Fields*, 2014 IL App (1st) 130209, ¶ 41. "Because the exemption merely withdraws certain persons from the scope of the statute, the State has no burden to disprove it." *Id.* Rather, a defendant has the burden to prove, by a preponderance of the evidence, that he falls within the invitee exemption of the AUUW statute. *Id.*, ¶ 45.

¶ 17 Defendant cites *People v. Brisco*, 2012 IL App (1st) 101612, in support of his argument that the state has the burden of negatively proving the invitee exception. In *Brisco*, a panel of this court seems to have accepted that it is the state's burden to prove that the invitee exception does

not apply. *Brisco*, ¶ 22. We decline to follow *Brisco* here. As the court noted in *Fields*, *Brisco* contained no analysis or discussion of sections 24-2(6)(5) and 24-2(h) because the State conceded that it was required to prove that the defendant was not an invitee as one of the elements of AUUW. *Fields*, 2014 IL App (1st) 130209, ¶ 42; *Brisco*, 2012 IL App (1st) 101612, ¶ 22. Because we find the analysis in *Fields* well-reasoned and persuasive, we reject defendant's reliance on *Brisco*.

¶ 18 Turning to the case at bar, defendant's only argument on appeal is that the State failed to establish beyond a reasonable doubt that he was not a social invitee at 8614 South Morgan. See *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007) (the State must prove each element of an offense beyond a reasonable doubt). However, pursuant to *Fields*, whether the defendant was an invitee with permission to possess a firearm is not an element of the offense of AUUW; rather, defendant had the burden to prove, by a preponderance of the evidence, that he fell within the invitee exemption of the AUUW statute. *Fields*, 2014 IL App (1st) 130209, ¶¶ 37, 45. Here, defendant did not meet that burden.

¶ 19 Although defendant testified at trial that he was visiting friends who "stayed" at 8614 South Morgan and admitted that there was a gun on the porch, he denied that the gun was his or that he touched the gun. Officer Huberts testified that he saw defendant with a hand on a gun which rested on the porch and that defendant stood up with a hand on the gun before going inside. Defendant did not present any facts at trial to show that he had permission to be on the premises carrying a firearm, and, consequently, he has failed to establish that he fell under the invitee exemption. See *Id.*, ¶ 45.

¶ 20 Ultimately, because the invitee exemption is not an element of the offense of AUUW, defendant had the burden to prove by a preponderance of the evidence that he was entitled to claim the invitee exemption. See *Id.*, ¶ 37. Because defendant failed to meet that burden, he failed to remove himself from "liability" under the statute. *Id.*, ¶ 41. Consequently, his conviction for AUUW is affirmed. See *People v. Brown*, 2013 IL 114196, ¶ 48 (a defendant's conviction will be reversed only where the evidence is so unreasonable or improbable that a reasonable doubt remains regarding his guilt).

¶ 21 Accordingly, this court affirms the judgment of the circuit court of Cook County.

¶ 22 Affirmed.