FIRST DIVISION
June 25, 2012

No. 1-11-1173

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	
	)	No. 10 CR 7236
	)	
LARRY LAWRENCE,	)	
	)	Honorable
Defendant-Appellant.	)	William G. Lacy,
	)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ *1* ***Held*****:** Defendant's convictions for aggravated unlawful use of a weapon and unlawful use of a weapon by a felon must be vacated under the one-act-one-crime rule. Defendant's conviction for aggravated unlawful use of a weapon does not violate the second amendment.

¶ 2 Following a bench trial, defendant Larry Lawrence was convicted on two counts of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6 (A)(1) (West 2008)) and one count of unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1 (A) (West 2008)), and was sentenced to concurrent prison terms of four years on each count. Defendant now appeals and argues: (1) he was found guilty of a single act of possessing a gun and therefore, one of his convictions for AUUW and his conviction for UUWF should be vacated under the one-act-one-crime rule; and (2) the AUUW statute violates his second amendment right to bear arms. For the following reasons, we vacate one of defendant's convictions for AUUW and his conviction for UUWF.

¶ 3 BACKGROUND

¶ 4 Defendant does not challenge the sufficiency of the evidence against him. Therefore, we will discuss only those facts relevant to the disposition of the appeal.

¶ 5 Chicago Police Sergeant Daniel Gallagher testified that he had pulled a car over for a traffic violation on the 6200 block of Carpenter. As he approached the car, he saw defendant emerge from a nearby gangway. Defendant was walking toward Sergeant Gallagher and looked right at him. Defendant grabbed at his right waistband and turned to walk away. Sergeant Gallagher called out to defendant and defendant began to run. As defendant ran, he grabbed a handgun from his waistband and tossed the gun under a parked, unoccupied minivan. Sergeant Gallagher was about 15 feet away from defendant when he saw defendant toss the gun under the minivan.

¶ 6 Sergeant Gallagher caught up with defendant, handcuffed him and placed him in

the squad car. Sergeant Gallagher retrieved the gun from under the minivan. The gun was a black semiautomatic handgun with 12 live rounds. The gun was inventoried.

¶ 7 The State introduced a certified copy of a conviction for defendant that established that he had been previously convicted for the felony offense of resisting a police officer.

¶ 8 Defendant testified that he was on the 6200 block of South Carpenter when Sergeant Gallagher pulled over, asked him to stop and come over to his vehicle. Defendant spoke to Sergeant Gallagher through the passenger side window. Sergeant Gallagher asked him his name and where he was going. Defendant gave him his name and told him that he was going to his mother's house. Sergeant Gallagher asked defendant where his mother lived and if had ever been arrested.

¶ 9 When defendant answered that he had been arrested, Sergeant Gallagher immediately told defendant to place his hands on the hood of the squad car, which defendant did. Defendant testified that Sergeant Gallagher then searched him, placed him in handcuffs and put him in the squad car. Sergeant Gallagher did not recover anything from defendant's person, but began searching the area. Defendant saw Sergeant Gallagher grab something from near the vehicle next to the squad car, but defendant did not see what it was until he got back into the car. When he returned to the squad car, Sergeant Gallagher had a gun, which defendant said was not his. Sergeant Gallagher then took defendant to the police station. At the police station, Sergeant Gallagher gave the gun to a female officer. Defendant was then processed in the police station. Defendant denied the events as testified to by Sergeant Gallagher.

¶ 10 After hearing all of the evidence, the trial court found defendant guilty of the charges against him. It is from this judgment that defendant now appeals.

¶ 11 ANALYSIS

¶ 12 Defendant argues, and the State concedes, that he was found in possession of a single gun, and therefore can only be convicted on one count of AUUW. Defendant maintains, and the State agrees, that one of his convictions for AUUW and his conviction for UUWF should be vacated. Under the one-act one-crime rule, multiple convictions arising out of a single physical act are prohibited. *People v. King*, 66 Ill. 2d 551, 566 (1977). We therefore vacate one conviction for AUUW and the less serious conviction of UUWF. *People v. Garcia*, 179 Ill. 2d 55, 71 (1997) (under the one-act, one-crime rule, a sentence should be imposed on the more serious offense and the conviction on the less serious offense should be vacated); See also *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 13 Defendant next argues that his AUUW conviction should be vacated because the subsections of the AUUW statute that criminalize the possession of a loaded firearm outside one's home violate both the state and federal constitutional right to bear arms. Defendant relies on the United States Supreme Court's recent rulings in *McDonald v. City of Chicago*, 130 S. Ct. 3020 (2010) and *District of Columbia v. Heller*, 554 U.S. 570, 594-601 (2008), in support of his argument that the second amendment protects an individual's inherent right to carry a firearm outside of the home for self-defense purposes.

¶ 14 In *Heller,* the Supreme Court struck down a District of Columbia law that banned

the possession of handguns in the home when it found that the second amendment protects the right to keep and bear arms in one's home for the purpose of self-defense. *Heller*, 554 U.S. 570. Likewise, in *McDonald*, the plurality of the Court concluded that the right to possess a handgun in the home was a fundamental right and was applicable to the states under the due process clause. *McDonald*, 130 S. Ct. at 3050.

¶ 15 Defendant urges this court to expand the holdings in *Heller* and *McDonald* to invalidate the subsections of the AUUW statute, of which he was convicted. Essentially, defendant asks this court to read *Heller* and *McDonald* more broadly to find that the AUUW statue implicates his second amendment right to carry loaded and easily accessible weapons outside of the home for self-defense purposes.

¶ 16 This court has considered and rejected arguments identical to that raised by defendant in this case in *People v. Mimes*, 2011 IL App (1st) 082747, ¶ 74; *People v. Aguilar*, 408 Ill. App. 3d 36 (1st Dist. 2011); *People v. Williams*, 2011 Ill. App. (1st) 093350, ¶ 57. As this court has repeatedly found, the AUUW statute does not implicate the fundamental right announced in *Heller* and extended to the states under *McDonald.* See *Heller*, 128 S. Ct. at 2801-12; *McDonald*, 130 S. Ct. at 3046-47 (holdings limited to "the right of law-abiding responsible citizens to use arms in the defense of hearth and home").

¶ 17 We agree with the reasoning in *Mimes*, *Aguilar* and *Williams* and find no reason to depart from the holdings that the AUUW statue, which limits the right of citizens to carry loaded and accessible firearms outside of their homes on their person and in their vehicles, does not violate the second amendment. See *Mimes*, 2011 IL App (1st)

082748; *Aguilar,* 408 Ill. App. 3d at 148-49; *Williams*, 2011 Ill. App. (1st) 093350, ¶ 57. We therefore reject defendant's argument on this issue.

¶ 18 We similarly reject defendant's "as applied" claim. It is well established that a court is not capable of making an "as applied" determination as to the constitutionality of a statute where there has been neither an evidentiary hearing nor any findings of fact in the lower court. *Reno v. Flores*, 507 U.S. 292, 300-01 (1993); *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 228 (2010). Defendant failed to litigate this issue in the trial court, so therefore we are not at liberty to consider it here.

¶ 19 CONCLUSION

¶ 20 For the aforementioned reasons, we affirm the judgment of the circuit court, vacate one of defendant's convictions for AUUW, vacate defendant's conviction for UUWF and, pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Jan. 1, 1967), correct the mittimus. *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995).

¶ 21 Affirmed in part and vacated in part; mittimus corrected