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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 10787
)	
KEENAN RAMSEY,)	Honorable
)	Nicholas Ford,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We vacated defendant's armed habitual criminal conviction where defendant's prior conviction for Class 4 aggravated unlawful use of a weapon was void *ab initio* and could not serve as the necessary predicate offense.

¶ 2 A jury convicted defendant, Keenan Ramsey, of armed habitual criminal statute predicated on two prior convictions for unlawful use of a weapon by a felon and aggravated unlawful use of a weapon. The trial court sentenced him to 10 years' imprisonment. On appeal, defendant contends his armed habitual criminal conviction must be vacated because one of his predicate offenses was for the Class 4 version of aggravated unlawful use of a weapon (AUUW) that was declared unconstitutional by our supreme court in *People v. Aguilar*, 2013 IL 112116. We vacate defendant's armed habitual criminal conviction.

¶ 3 Defendant was charged with the offenses of armed habitual criminal, aggravated unlawful use of a weapon, and unlawful use of a weapon by a felon. The charging document for the armed habitual criminal offense alleged that defendant knowingly or intentionally possessed a firearm on May 30, 2012, after having previously been convicted of a Class 4 AUUW and unlawful use of a weapon by a felon (UUWF).

¶ 4 Defendant filed a motion to dismiss the armed habitual criminal charge on the basis that his predicate Class 4 AUUW conviction was unconstitutional under the reasoning of the Seventh Circuit Court of Appeals decision in *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012). The trial court denied the defense motion.

¶ 5 At trial, Officer Turner Goodwin testified that at about 11:20 p.m. on May 30, 2012, he and his partner, Officer Clifton Turner, were parked in their unmarked police vehicle outside a store at 15 West 107th Street. Officer Goodwin saw a grey vehicle with two persons inside traveling through the alley with the headlights off. Officer Goodwin, who was driving, pulled behind the vehicle and turned on his emergency lights. The vehicle turned westbound, and the officers followed.

¶ 6 The vehicle stopped and defendant jumped out with a silver gun in his hand. Defendant tossed the gun over a six-foot fence and fled down the alley as the vehicle "took off." The officers exited their police vehicle. Officer Turner pursued defendant on foot while Officer Goodwin recovered the gun that defendant had thrown over the fence. The gun was a .45-caliber handgun loaded with seven live rounds. Officer Goodwin put the gun inside his waistband, entered his police vehicle, and drove westbound in order to help Officer Turner in his pursuit of defendant. Officer Goodwin subsequently saw that Officer Turner had apprehended defendant around 10701 South Lafayette Avenue.

¶ 7 Defendant was transported to the police station, where Officer Goodwin advised him of his *Miranda* rights. Defendant agreed to talk. Officer Goodwin asked him why he was carrying a gun. Defendant replied that he carried the gun to protect himself.

¶ 8 Officer Clifton Turner testified consistently with Officer Goodwin regarding how they saw a grey vehicle driving down the alley with no headlights on, and that they followed the vehicle and saw defendant exit the passenger side with a gun in his hand, which he threw over a fence. Defendant then ran westbound through the alley to Lafayette Avenue, where he made a right and started running northbound down Lafayette Avenue. Officer Turner followed him on foot and yelled: "[s]top, police" and "[p]lease get on the ground." When defendant got to the end of the block, around 10701 South Lafayette Avenue, he complied with Officer Turner's command and dropped to the ground.

¶ 9 Defendant was transported to the police station and was advised of his *Miranda* rights. Defendant stated he was carrying the gun because "there is a lot of shooting going on over there," and that he needed to protect himself. At the police station, Officer Turner placed into inventory the gun that Officer Goodwin had recovered. They did not send the weapon to be fingerprinted because they felt there was no need to do so since they had seen the gun in defendant's possession. The officers did not ask defendant to give a written statement.

¶ 10 Following Officer Turner's testimony, the parties stipulated that defendant had two prior convictions that qualified him for prosecution as an armed habitual criminal.

¶ 11 For the defense, defendant's brother, Kyle Ramsey, testified that at about 11 p.m. on May 30, 2012, he was driving defendant to a girlfriend's house. The vehicle they were driving was a silver blue 2006 Chevy Impala; the headlights were on. They drove through an alley between Lafayette Avenue and State Street and turned down another alley.

¶ 12 Kyle noticed a police vehicle behind them. As he came out of the alley and turned onto Lafayette Avenue, the police activated the emergency lights. Kyle pulled over at 107th Street and Lafayette Avenue. The police officers came to the door of his vehicle, opened it, put him and defendant in handcuffs, and transported them to the back of the police vehicle.

¶ 13 While they were in the police vehicle, one of the officers went back towards the alley. The officer later returned from the alley, stated "we had a gun," and arrested defendant. They let Kyle go.

¶ 14 Kyle testified that neither he nor defendant had a gun in the vehicle. Kyle never saw defendant jump out of the vehicle and he never saw defendant throw a gun.

¶ 15 Renee Jefferson testified that at about 11 p.m., on May 30, 2012, she and her sister were walking to a store at 107th Street and Lafayette Avenue. She saw defendant and Kyle "[o]n the police car." She also saw a police officer "go towards the alley," after which the officers put defendant in the police vehicle and released Kyle.

¶ 16 Following closing arguments, the jury convicted defendant of armed habitual criminal. The trial court sentenced defendant to 10 years' imprisonment. Defendant filed a motion to reconsider sentence, which the trial court denied. Defendant appeals.

¶ 17 Defendant contends the State failed to prove him guilty of armed habitual criminal beyond a reasonable doubt. When considering a challenge to a criminal conviction based on the sufficiency of the evidence, our inquiry is limited to whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wright*, 2015 IL App (1st) 123496, ¶ 73.

¶ 18 To sustain a conviction for armed habitual criminal, the State was required to prove that defendant possessed a firearm after having been convicted of at least two qualifying predicate

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offenses. See 720 ILCS 5/24-1.7(a) (West 2010). In the present case, the two predicate offenses were UUWF in case number 10 CR 17047 and the Class 4 version of AUUW in case number 07 CR 733.

¶ 19 Defendant argues that we should vacate his conviction for armed habitual criminal in light of *Aguilar*. In *Aguilar*, our supreme court found the Class 4 version of the AUUW to be facially unconstitutional in violation of the second amendment right to bear arms. *Aguilar*, 2013 IL 112116, ¶ 1. "When a statute is declared unconstitutional, it is void *ab initio*, or as though the law had never been passed." *People v. Fields*, 2014 IL App (1st) 110311, ¶ 38.

¶ 20 Defendant argues that the State cannot rely on his void conviction as a predicate offense for armed habitual criminal and, therefore, that the State failed to prove an essential element of armed habitual criminal beyond a reasonable doubt.

¶ 21 *Fields* is dispositive. In *Fields*, as here, the defendant was convicted of being an armed habitual criminal after the parties stipulated to the predicate convictions at trial, one of which was a Class 4 AUUW conviction. *Id.* ¶ 43. On defendant's appeal, the appellate court held:

"[W]e cannot allow defendant's 2005 Class 4 AUUW conviction, which we now know is based on a statute that was found to be unconstitutional and void *ab initio* in *Aguilar*, to stand as a predicate offense for defendant's armed habitual criminal conviction, where the State is required to prove each element of the Class 4 AUUW beyond a reasonable doubt. 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." *Id.* ¶ 44.

Accordingly, the appellate court vacated defendant's armed habitual conviction. *Id.* ¶ 51. See, also, *People v. McFadden*, 2014 IL App (1st) 102939, *appeal allowed*, No. 117424, 8 N.E.3d 1051 (Ill. May 28, 2014), and *People v. Claxton*, 2014 IL App (1st) 132681, ¶ 15 (holding that a

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conviction for the Class 4 version of AUUW is void *ab initio* under *Aguilar* and cannot serve as the predicate felony for UUWF).

¶ 22 The State argues that we lack jurisdiction to consider the validity of defendant's predicate conviction for the Class 4 version of AUUW. The State also argues that the status of the predicate felony conviction at the time defendant possesses the firearm controls for purposes of determining whether he is guilty of armed habitual criminal, regardless of whether the predicate conviction is later found to be unconstitutional. Since the Class 4 version of AUUW had not been declared unconstitutional at the time defendant possessed the firearm, the State contends we must affirm the armed habitual criminal conviction. Finally, the State argues that if we reverse defendant's armed habitual criminal conviction, we will sow uncertainty as every conviction for UUWF or armed habitual criminal could be undermined by a later determination that the predicate offense was invalid.

¶ 23 These arguments have been addressed and rejected in *Claxton*, and we decline to readdress them here. See *Id.* ¶¶ 16-19.

¶ 24 Pursuant to *Aguilar*, we find that defendant's Class 4 AUUW conviction is void *ab initio*. As such, it cannot serve as an essential element of his armed habitual criminal conviction so that his armed habitual criminal conviction must be vacated.

¶ 25 As a result of our disposition of this case, we need not address the other arguments on appeal. Additionally, we note that we are not vacating or reversing defendant's Class 4 AUUW conviction pursuant to *Aguilar* and we decline to address whether formal proceedings for collateral relief may be available to defendant to do so.

¶ 26 For the foregoing reasons, the judgment of the circuit court is vacated.

¶ 27 Vacated.