2016 IL App (1st) 140613-U

FIRST DIVISION
March 28, 2016

No. 1-14-0613

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. 11 CR 11010
	)	
MICHAEL ELLIS,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LIU delivered the judgment of the court.
Justice Cunningham and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for one count of armed habitual criminal and one count of unlawful possession of a firearm by a felon are vacated and the trial court's judgment reversed, where police officers removed a handgun from defendant's car after he left the car and then arrested him without having probable cause to believe a crime had been committed by defendant at the time of his arrest, other than the violation of the aggravated unlawful use of a weapon statute that was later determined unconstitutional *ab initio* under *People v. Aguilar*, 2013 IL 112116.

¶ 2 Defendant, Michael Ellis, was arrested after Chicago police officers observed him throwing a gun into the passenger side of a parked vehicle, closing the car door, and walking

away. The officers retrieved the gun and arrested defendant. Following a bench trial, defendant was convicted of armed habitual criminal and unlawful use or possession of a weapon by a felon. Defendant contends that (1) the trial court erred in denying his motion to suppress evidence and quash his arrest; and (2) the armed habitual criminal offense is facially unconstitutional. We reverse the judgment and vacate defendant's conviction.

¶ 3 BACKGROUND

¶ 4 The State charged defendant with one count of armed habitual criminal for possession of a firearm after having been convicted of two felonies (720 ILCS 5/24-1.7(a) (West 2010)), two counts of unlawful use or possession of a weapon by a felon for possessing a firearm after having been convicted of a felony (UUW) (720 ILCS 5/24.1.1(a) (West 2010)), and two counts of aggravated unlawful use of a weapon (AUUW) for carrying a firearm without a valid Firearm Owners Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C) (West 2010)).

¶ 5 At trial, the State's case against defendant consisted primarily of the testimony of three of the four police officers involved in defendant's arrest, and whose accounts of the day's events were generally consistent and found to be credible by the trial court. Defendant, who declined to take the stand in his own defense, offered no evidence to rebut the officers' testimony, and does not contest the substance of their testimony on appeal. The following account of the incident leading to defendant's arrest was presented at trial.

¶ 6 On April 27, 2011, at about 10:50 p.m., four Chicago police officers occupying two police vehicles were heading north on Harding Avenue approaching Thomas Street. The officers were assigned to routine patrol in that area due to recent high crime activity and had their headlights off to avoid detection. Officers Esquivel and Valentin, who were in the front vehicle, had an unobstructed view of defendant standing next to a burgundy Ford Taurus which was

parked on the north side of Thomas Street facing east. The officers saw defendant standing by the passenger side door, "looking in all multiple directions in a very suspicious manner." Defendant opened the passenger side door, removed a dark object from his waistband which appeared to the officers to be a gun, and tossed the object into the car. Defendant then closed the door and began quickly walking westbound on Thomas Street. These observations were relayed via radio to Officers De La Rosa and Rojas, who were in the rear police vehicle.

¶ 7 As defendant walked down Thomas Street, Officers Esquivel and De La Rosa approached the car and, standing outside the car and looking through the passenger side door window, observed a nickel-plated revolver which appeared to be in working condition sitting on the passenger seat. The car was otherwise empty, with no individuals or other objects visible to the officers. Officer De La Rosa opened the unlocked passenger side door, took the gun from the seat, and placed it in an evidence bag. After Officer De La Rosa recovered the gun, the officers put the car's license plate number into the officers' personal data terminal, which revealed that the car was registered in defendant's name.

¶ 8 As Officers Esquivel and De La Rosa investigated the parked car, Officer Rojas exited his vehicle and approached defendant on foot. Before Officer Rojas reached defendant, Officer De La Rosa used the radio to inform the other officers that a gun was recovered from the parked car. After receiving that message, Officer Rojas immediately arrested defendant and placed him in the back of his police vehicle. A custodial search of defendant produced car keys which, the officers learned upon investigation, belonged to the parked car. The officers then transported defendant to the 11th district police station.

¶ 9 Having waived his right to counsel, on July 28, 2011, defendant filed a *pro se* motion to suppress the evidence recovered from his vehicle and quash his arrest. Defendant argued that the

gun was recovered unlawfully and must be excluded from trial. Officers Esquivel and Valentin testified at the hearing on defendant's motion. Officer Esquivel stated that he approached the car because he found defendant's actions to be suspicious, and Officer Valentin explained that he approached the car because of what he "believed to be a gun being tossed in the car." Officer Esquivel testified that he did not know who defendant was or whether defendant had a FOID card, and prior to recovering the gun, no officer conducted a field investigation to acquire this information. Officer Esquivel also stated that at the time he witnessed defendant putting an object in the car, he did not know whether defendant was breaking any law. Both officers testified that none of the officers on the scene had a warrant to search defendant's vehicle, nor did any officer have a key to the car prior to retrieving the gun. Defendant argued that the gun must be excluded from the evidence presented and admitted at trial because the officers acted without a warrant and the seizure cannot be justified under any exception to the warrant requirement, and the officers had no probable cause to arrest him.

¶ 10 The trial court denied defendant's motion to suppress. The court found the officers' testimony that they saw defendant throw a gun into the vehicle and walk away to be credible. Finding the officers had probable cause, the trial court explained,

> "[w]hen the officers came up to the car, they were standing where they had a right to be, that is, on the public street or public way, and they could see a gun in the car. So there is no search. They had probable cause at that point to search the vehicle and seize the weapon and probable cause to arrest the Defendant."

¶ 11 Prior to trial, the State *nolle prossed* three of defendant's charges, including one count of UUW and the two counts of AUUW. Defendant's trial on the remaining two counts began on May 29, 2013. The State's case included the testimony of Officers Esquivel, Rojas, and De La

Rosa who recounted the events surrounding defendant's arrest as summarized above. During his testimony, Officer Esquivel identified the gun recovered from the vehicle, which was later entered into evidence. The State also presented evidence of two of defendant's prior felony convictions, calling the arresting officers from each incident who respectively testified that defendant pled guilty in 2004 to the crime of delivery of a controlled substance, and was found guilty in 2006 to the crime of possession of a controlled substance with intent to deliver. After the State rested, defendant presented his case, again waiving his right to legal counsel. Defendant recalled Officers Esquivel and De La Rosa as witnesses, and called for the testimony of Officer Valentin; their testimony consisted primarily of the same account of events described in the State's case. Defendant declined to testify in his own defense.

¶ 12 Defendant was found guilty of both counts, armed habitual criminal and UUW; the latter offense merged into the former. Following the trial court's denial of defendant's multiple posttrial motions, the court sentenced him to natural life in prison on February 10, 2014. Defendant filed a timely notice of appeal on March 6, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009).

¶ 13 ANALYSIS

¶ 14 Defendant raises two issues on appeal. He first contends that the officers, who were acting without a warrant, lacked the necessary probable cause of criminal activity required to enter his vehicle, retrieve the gun, and arrest defendant based on the belief that defendant had thrown the gun into the vehicle. He argues that the evidence obtained as a result of that seizure and arrest must be suppressed. Defendant's second argument is that the armed habitual criminal

offense is facially unconstitutional because it criminalizes both the lawful and unlawful possession of firearms. This court does not reach defendant's second argument.

¶ 15 We begin by reviewing the trial court's ruling on defendant's motion to suppress evidence and quash arrest. In conducting this review, we give great deference to the trial court's findings of fact which are to be reversed only where they are against the manifest weight of the evidence. *People v. Holmes*, 2015 IL App (1st) 141256, ¶ 14. As to the trial court's ultimate ruling on whether the evidence should be suppressed and the arrest quashed, our review is *de novo*. *Id.*

¶ 16 Individuals in Illinois are guaranteed the right to be free from unreasonable searches and seizures under both the state and federal constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. Where a search or seizure is conducted "without prior approval by judge or magistrate," *i.e.*, without a warrant, the conduct is considered "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." (Internal quotation marks omitted.) *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993); see also *People v. LeFlore*, 2015 IL 116799, ¶ 17. However, the constitution "does not proscribe all searches and seizures but only those that are unreasonable, thereby upholding at the same time fair leeway for the enforcement of law and the protection of the community at large." *People v. Hall*, 352 Ill. App. 3d 537, 545 (2004). Our supreme court follows the "limited lockstep" approach to interpreting cognate provisions in the state and federal constitutions, which requires the court to "look first to the federal constitution, and only if federal law provides no relief turn to the state constitution to determine whether a specific criterion—for example, unique state history or state experience—justifies departure from federal precedent." (Internal quotation marks omitted.) *People v. Caballes*, 221 Ill. 2d 282, 309 (2006).

¶ 17 This court first addresses the question of whether the officers were authorized to enter defendant's vehicle to retrieve the gun. The State argues that no search was performed by the officers because their actions did not involve " 'prying into hidden places' or an 'invasion' that required 'actual or constructive force' " (quoting *People v. Rogers*, 18 Ill. App. 3d 940, 943 (1974)). The State contends that, therefore, no search was performed because the gun was visible to the officers who were lawfully standing outside the vehicle which was on a public street. The central issue is whether the State's intrusion infringed on defendant's " 'constitutionally protected reasonable expectation of privacy.' " *New York v. Class*, 475 U.S. 106, 112 (1986) (quoting *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). While an automobile on a public road has a "lessened expectation of privacy therein," courts also recognize that "[a] citizen does not surrender all the protections of the Fourth Amendment by entering an automobile." *Id.*

¶ 18 In resolving this issue, we find guidance in the U.S. Supreme Court decision *New York v. Class*. In that case, acting without a warrant, a police officer opened the defendant's car door to look for the vehicle identification number (VIN), and moved several papers which were obscuring the number on the dashboard. *Class*, 475 U.S. at 108. The Supreme Court determined that this limited invasion constituted a search, finding that "[w]hile the interior of an automobile is not subject to the same expectations of privacy that exist with respect to one's home, a car's interior as a whole is nonetheless subject to Fourth Amendment protection from unreasonable intrusions by the police." *Id.* at 114-15. The Court proceeded to weigh the competing interests between individual liberties and effective law enforcement, and noted that the search was "focused in its objective and no more intrusive than necessary to fulfill that objective." *Id.* at 118. It concluded that "the search was sufficiently unintrusive to be constitutionally permissible in

light of the lack of a reasonable expectation of privacy in the VIN and the fact that the officers observed respondent commit two traffic violations." *Id.* at 119.

¶ 19 We find *Class* to be helpful in determining whether Officer De La Rosa performed an unconstitutional search of defendant's vehicle. By opening the car door and entering the car's interior, the officer performed a search and did not have a warrant permitting that search. However, the search was extremely limited in scope: it was focused on retrieving the gun the officer had already observed, and was "sufficiently unintrusive" beyond this objective. However, this is only a valid objective if the gun's presence provides probable cause of criminal activity. Furthermore, under the automobile exception to the warrant requirement, "law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize." *People v. James*, 163 Ill. 2d 302 (1994). Therefore, in order to resolve the question of whether the officer's limited search was unconstitutional, this court must determine whether the observation of a gun in the vehicle was sufficient to establish probable cause of criminal activity, and we examine this issue below.

¶ 20 The presence of probable cause is also central to the issue of whether the officers' *seizure* of the gun was constitutionally permissible. The State argues that the seizure of the gun was lawful pursuant to the plain view seizure doctrine. In *People v. Jones*, 215 Ill. 2d 261 (2005), our supreme court found that the warrantless seizure of an object is permissible if "(1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access to the object." *Jones*, 215 Ill. 2d at 271-72. If these factors are satisfied, then the seizure of the object "involves no invasion of privacy and is presumptively reasonable, assuming that there is probable cause to

associate the property with criminal activity." (Emphasis omitted.) *Id.* at 272. The State contends that since the officers observed the gun on the passenger seat of the vehicle from outside the vehicle on a public street where the officers were permitted to be without a warrant, "the nature of the gun" justified the officer entering the car and seizing it.

¶ 21 We find that the first element of the plain view seizure doctrine was satisfied here because the officers viewed the gun from a public area where they were lawfully allowed to be. The third element was conditionally met; as established above, assuming the presence of the gun provided probable cause of criminal activity, the officer did not violate the constitution by opening the car door to gain access to the gun. The third element, as well as whether the plain view seizure doctrine was satisfied generally, turns on whether the second element was met: whether "the incriminating character of the object [was] immediately apparent," *i.e.*, whether the police had probable cause to believe the object was evidence of criminal activity. See *id.* at 272.

¶ 22 "Probable cause means more than bare suspicion." *Id.* at 273; see also *People v. Bunch*, 327 Ill. App. 3d 979, 983-84 (2002) ("Suspicions, no matter how reasonable, do not add up to probable cause to arrest."). Probable cause exists "where the arresting officer has knowledge of facts and circumstances that are sufficient to justify a reasonable person to believe that the defendant has committed or is committing a crime." *Jones*, 215 Ill. 2d at 273-74 (citing *Brinegar v. United States*, 338 U.S. 160, 175-76 (1949)). In finding probable cause, the officer may "rely on training and experience to draw inferences and make deductions," and when determining whether the officer's actions were objectively reasonable, the court may take the officer's skill and knowledge into account. *Id.* at 274-75.

¶ 23 In the present case, Chicago police officers approached defendant's vehicle and observed a gun sitting in the passenger seat, which they suspected was placed there by defendant who they

had just watched throw a dark object into the vehicle. The officers testified that at the time the gun was seized, the officers did not know who defendant was, whether he had a FOID card, or even whether he was breaking any law. They testified that their presence in that neighborhood was not related to any specific crime occurring that evening; they were assigned to patrol there due to higher criminal activity in general. The officers also testified that the reason they were watching defendant was because he looked suspicious. They did not testify that they saw him commit a crime or believed he was connected with any specific crime.

¶ 24 In its oral ruling on defendant's motion to suppress, the trial court did not explain the basis it found for the officers' probable cause to seize the gun and arrest defendant other than stating that "[the officers] could see a gun in the car." The parties agree that as of the date of the incident, April 27, 2011, Illinois law completely prohibited the possession of an operable handgun in public if it was uncased, loaded, and immediately accessible at the time of the offense. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), invalidated by *People v. Aguilar*, 2013 IL 112116. After seeing defendant throwing an object that resembled a gun into the vehicle, and seeing the gun sitting on the passenger seat from their vantage point right outside the vehicle, the officers had, at that time, probable cause to seize the gun and arrest defendant. However, subsequent judicial precedent has found certain portions that statute to be unconstitutional; the provision that justified the seizure of the gun at that time would not justify such a seizure today.

¶ 25 In *Moore v. Madigan*, the Seventh Circuit held that the complete ban on possessing operable firearms outside the home contained in the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) constitutes a facial violation of the second amendment. *Moore v. Madigan*, 702 F. 3d 933, 940 (7th Cir. 2012) (citing 720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d)). Our supreme court followed *Moore* in *People v. Aguilar*, where it found section 24-1.6(a)(1), (a)(3)(A), (d) to be

unconstitutional on its face and void *ab initio*. *Aguilar*, 2013 IL 112116, ¶¶ 21-22. The court has since clarified that *Aguilar* stands for the proposition that "section 24-1.6(a)(1), (a)(3)(A) of the statute is facially unconstitutional, without limitation." *People v. Burns*, 2015 IL 117387, ¶25.

¶ 26 In post-*Aguilar* fourth amendment jurisprudence, the mere observation of a gun is not in itself, *without any other evidence of a crime*, sufficient to provide an officer with probable cause for arrest. We have reviewed the record and have found no other basis for probable cause to seize the gun and arrest defendant on April 27, 2011, nor does the State provide any such argument. The State simply states that "the illegality of an uncased, seemingly loaded and immediately accessible, firearm pursuant to the statute then in effect, was immediately apparent to the officers," but this is insufficient for a finding of probable cause. This court now turns to the question of whether evidence seized pursuant to this portion of the AUUW statute, permissibly relied on by the officers at the time but subsequently found to be facially unconstitutional, may now be used against defendant.

¶ 27 Where evidence is obtained in violation of the fourth amendment, the evidence may not be used against the defendant in a criminal proceeding pursuant to the exclusionary rule. *Davis v. United States*, 564 U.S. 229, ___, 131 S. Ct. 2419, 2423 (2011). Courts have stated, however, that the purpose of the exclusionary rule is not to provide a constitutional right to the aggrieved party, but to act as a deterrent against improper conduct by agents of the government. *United States v. Leon*, 468 U.S. 897, 906 (1984) (citing *United States v. Calandra*, 414 U.S. 338, 348 (1974)). Accordingly, the U.S. Supreme Court has created a "good-faith exception" to the exclusionary rule, which allows the use of evidence where the officer acted in "objectively reasonable reliance" on a subsequently invalidated search warrant (*Leon*, 468 U.S. at 922), or a statute authorizing warrantless administrative searches ultimately found to violate the fourth

amendment (*Illinois v. Krull*, 480 U.S. 340, 349-50 (1987)). The court has further ruled that the exclusionary rule does not necessarily bar evidence obtained by police in a search based on a violation of a law later invalidated as unconstitutional. *Michigan v. DeFillippo*, 443 U.S. 31, 38-39 (1979).

¶ 28 Until 1996, our supreme court followed the "lockstep doctrine" of following U.S. Supreme Court decisions in fourth amendment cases. *People v. Krueger*, 175 Ill. 2d 60, 74 (1996). That changed with *Krueger*, where the court declined to follow the *Krull* decision where the good-faith exception was applied for evidence obtained pursuant to a search premised on a statute authorizing a warrantless search which was later found to be unconstitutional. *Id.* In deciding whether to follow *Krull*, our supreme court balanced the "legitimate aims of law enforcement" against an individual's right to be "free from unreasonable governmental intrusion." *Id.* at 75. The court decided that evidence obtained pursuant to a "no-knock" statute, which was subsequently found to be an unconstitutional violation of the fourth amendment, may not be admitted at trial pursuant to the good-faith exception to the exclusionary rule. *Id.* at 62-63, 75-76. It reasoned that the alternative conclusion would "provide a grace period for unconstitutional search and seizure legislation, during which time our citizens' prized constitutional rights can be violated with impunity." *Id.* at 75.

¶ 29 In 2002, our supreme court refused to apply the good-faith exception based on the void *ab initio* doctrine. *People v. Carrera*, 203 Ill. 2d 1, 16-17 (2002). In *Carrera*, the court applied a similar rationale as used in *Krueger* to hold that an arrest effectuated pursuant to a statute which was later found to be unconstitutional is unlawful, and evidence seized in conjunction with that arrest is subject to the exclusionary rule. *Id.* Our supreme court explained that a statute which is facially invalid and thus void *ab initio* is to be treated "as though no such law had ever been

passed" and, similar to *Krueger*, stated that to find otherwise would be to "provide a grace period *** during which our citizens would have been subject to *** arrests without proper authorization." *Id.* at 14-16. The statute in *Carrera* was found unconstitutional because it was adopted in violation of the single subject clause, but the "expansive language" used in *Carrera* has been interpreted to mean that the void *ab initio* doctrine applies with equal force to "legislative acts that were found unconstitutional for violating substantive constitutional guarantees." *Holmes*, 2015 IL App (1st) 141256, ¶ 31. Based on the language used in *Carrera*, we conclude the void *ab initio* doctrine precludes the application of the good-faith doctrine in the present case.

¶ 30 The State cites *People v. LeFlore* to argue that the exclusionary rule should not apply when a police officer relied on the legal landscape that existed at that time and the officer had no reason to suspect that his conduct was wrongful under the circumstances. *People v. LeFlore*, 2015 IL 116799, ¶ 31. In *LeFlore*, acting without a warrant, an officer affixed a GPS device to the defendant's car to track its location. *Id.* ¶ 4. While this was considered lawful conduct at the time it was done, a subsequent U.S. Supreme Court decision held that the warrantless use of a GPS device to monitor a vehicle's movements constituted unlawful trespass and therefore an unconstitutional search under the fourth amendment. *Id.* ¶¶ 8-10. Despite this change in judicial precedent, our supreme court applied the good-faith exception to the exclusionary rule to allow the use of the evidence obtained by the officer who was acting in reliance of the state of the law at that time. *Id.* ¶ 31.

¶ 31 There is a significant difference between when an officer acts in reliance on subsequently changing judicial precedent (as in *LeFlore*), and on a statute later found facially unconstitutional (as in the present case), when determining whether the evidence is subject to the exclusionary

rule. This distinction is specifically recognized in the *LeFlore* opinion where our supreme court stated:

> "it is crystal clear that *Krueger* held only that the good-faith exception as expressed in *Krull*—which dealt only with an officer's reliance on a *statute* later declared unconstitutional—would not be recognized in Illinois for purposes of our state constitution. *Krueger* therefore has no application to the present case where an officer could have reasonably relied in objective good faith on binding appellate judicial decisions and the constitutional norm that had been established thereby." (Emphasis in original.) *Id.* ¶ 66.

The court explained that "the same threat to fourth amendment values that was of concern in *Krueger* is not present when police reasonably rely in objective good faith on judicial precedent." *Id.* Accordingly, this court does not rely on *LeFlore* in reaching its decision and finds that there is no basis for withholding application of the exclusionary rule here.

¶ 32 This is not the first time that such a scenario has been addressed by the First District. Recently, in *People v. Holmes*, the court addressed the trial court's ruling on a motion to suppress evidence where the probable cause for arrest was based on the portion of the AUUW statute later found to be unconstitutional in *Aguilar*. *Holmes*, 2015 IL App (1st) 141256, ¶ 2. In that case, a police officer observed the defendant with a revolver sticking out of his waistband; the officer approached him, removed the revolver, and placed him under arrest. *Id.* ¶ 7. Following the arrest, the officer learned that the defendant had not been issued a FOID card, but the officer did not know anything about the defendant prior to the arrest. *Id.* Arguing against the defendant's motion to suppress, the State contended that the gun was in plain view, the officer's actions were reasonable, and there was probable cause because *Aguilar* did not invalidate the FOID-card

provision of the AUUW statute. *Id.* ¶ 8. The trial court granted the defendant's motion to suppress, finding that the officer lacked probable cause because he did not know whether the defendant had a valid FOID card and was investigating the defendant for violating a law later found to be unconstitutional *ab initio*. *Id.* ¶ 9. The appellate court affirmed. *Id.* ¶ 36-38. This court finds *Holmes* to be instructive and sees no reason to depart from this precedent.

¶ 33 The same scenario is presented here where the officers did not know who defendant was or whether he had been issued a FOID card. The fact that defendant was *later* charged with the FOID-card portion of the AUUW statute does not mean that the officers had enough information for probable cause that defendant was in violation that portion of the AUUW statute at the time of his arrest. In *Holmes*, the court quoted the trial court observing that "the officer could have effectuated a valid *Terry* stop (*Terry v. Ohio*, 392 U.S. 1 (1968)) and inquired right away whether [the] defendant had a FOID card," with the implication that had the defendant answered in the negative, there would have been sufficient basis for a lawful arrest. *Holmes*, 2015 IL App (1st) 141256, ¶ 9. However, in *Holmes*, just as in the present case, "the officer did not do so." *Id.*

¶ 34 The State cites *Heien v. North Carolina*, __ U.S. __, 135 S. Ct. 530 (2014), and *People v. Gaytan*, 2015 IL App (1st) 116223, for the proposition that a seizure can be reasonable under the fourth amendment even if the police officer was mistaken as to whether the defendant's conduct constituted a crime. By extension, the State reasons, because the officers in this case "reasonably relied in objective good faith on a valid, constitutional statute that was in effect at that time," the officers' actions were reasonable. However, neither *Heien* nor *Gaytan* addresses the admissibility of evidence obtained as a result of a fourth amendment search or seizure premised on the violation of a statute which was valid at the time but later declared unconstitutional *ab initio*.

This legal question is distinct from the one answered by those two cases, and the State's reliance on *Heien* and *Gaytan* here is misplaced.

¶ 35 *Heien v. North Carolina* concerns a police officer's misunderstanding of the law, where the validity of the law was never in dispute. In *Heien*, the defendant was a passenger in a vehicle pulled over by the officer for having only one functioning brake light. *Heien*, 135 S. Ct. at 534. During the traffic stop, the defendant consented to a search of his vehicle and the officer found a duffle bag which contained a sandwich bag of cocaine, for which the defendant was arrested and charged. *Id.* at 534-35. The defendant filed a motion to suppress the evidence seized from the car on the basis that driving with only one functioning brake light was not a violation of state law, and therefore the stop and search had been unreasonable under the fourth amendment. *Id.* at 535. Agreeing with the defendant's interpretation of the law, and recognizing the fourth amendment requires reasonable suspicion of a violation of law to justify a traffic stop, the U.S. Supreme Court considered the question of "whether reasonable suspicion can rest on a mistaken understanding of the scope of a legal prohibition." *Id.* at 535-36. The Court answered that question in the affirmative, and after finding the officer's suspicion that the defendant's conduct was illegal was reasonable, affirmed the denial of the defendant's motion to suppress. *Id.* at 536-40.

¶ 36 In *People v. Gaytan*, our supreme court applied the reasoning used in *Heien* to Illinois fourth amendment jurisprudence. There, the defendant was pulled over because the officers believed his vehicle's trailer hitch obstructed the rear license plate, and considered that to be a violation of the law. *Gaytan*, 2015 IL 116223, ¶ 5. During the traffic stop, the officers detected an odor of cannabis, and a subsequent search of the vehicle revealed a container of cannabis, for which the defendant was indicted for possession and intent to deliver. *Id.* ¶¶ 5-6. As in *Heien*, the

defendant filed a motion to suppress the seized evidence on the basis that the articulated reason for pulling him over was not actually prohibited by any statute. *Id.* ¶ 6. Our supreme court agreed with the latter portion of that assertion; after a thorough analysis of the statute governing the visibility of rear license plates, it interpreted it in such a way as to find that the defendant had not been in violation of the law when the officers pulled him over. See *id.* ¶ 39. However, the court determined that even if the defendant was not in violation of the statute, the traffic stop was valid. *Id.* ¶ 53. The court adopted the holding in *Heien* to conclude that the officers' mistake of the law was reasonable and thus "provided the reasonable suspicion necessary to justify the stop under the fourth amendment." *Id.* ¶ 47. While discussing *Heien*, our supreme court acknowledged that "Illinois' exclusionary rule has traditionally been interpreted more broadly than its federal counterpart." *Id.* ¶ 51. However, it also noted that neither that case nor *Heien* required determining the proper remedy for an unlawful seizure because the officers "initiated the vehicle stop based on an objectively reasonable, though mistaken, belief that the defendant's conduct was illegal" and therefore "there was no constitutional violation to begin with." *Id.* ¶ 52.

¶ 37 The holdings in *Heien* and *Gaytan* do not guide our analysis. In those cases, the focus was on the officers' conduct, their mistakes of the law, and whether those mistakes were so unreasonable that any resulting detention or search violated the fourth amendment. This case is not premised on any officer's mistake of the law and requires no such determination. The State insists that "it is clear that the officers' actions here were reasonable," and we agree that when the officers seized the gun and arrested defendant, they had reason to believe that defendant was in violation of a law that was considered valid *at the time*. This is not in dispute, nor is it the focus of this case. Instead, the focus is on the validity of the statute itself, the significance of the fact that the statute has since been declared unconstitutional, and whether the evidence seized by

officers who relied on that statute can be used under the good-faith exception to the exclusionary rule. In *Gaytan*, our supreme court made specific reference to the fact that these are two distinct legal questions; it concluded that because no constitutional violation had occurred, "*Heien* did not extend the good-faith exception to the exclusionary rule." *Id.* ¶ 52. Here, conversely, a constitutional violation *did* occur, and despite the fact that it was not considered a constitutional violation at the time, this court is obligated to retroactively apply that determination here.

¶ 38 Lacking probable cause, the officers' seizure of the gun and arrest of defendant were unconstitutional. We reverse the order of the trial court denying defendant's motion to suppress and quash arrest. Because the State cannot prevail on remand due to the fact that the suppressed evidence is the only evidence of defendant's guilt, the appropriate remedy is outright reversal. See *People v. Trisby*, 2013 IL App (1st) 112552, ¶ 19 (the defendant's conviction for possession of a controlled substance reversed outright after the drugs recovered during an unconstitutional search had been suppressed); *People v. Abdur-Rahim*, 2014 IL App (3d) 130558, ¶ 33 (the State could not convict the defendant without the evidence of drugs recovered during the unconstitutional detention of the defendant); *People v. Leigh*, 341 Ill. App. 3d 492, 497 (2003) (without the evidence of a gun seized during an unconstitutional detention, the defendant could not be convicted on retrial of unlawful possession of a firearm by a felon).

¶ 39 Last, defendant argues that we should vacate his conviction for the armed habitual criminal offense (720 ILCS 5/24-1.7 (West 2010)) because that offense is facially unconstitutional. However, having vacated defendant's conviction on other grounds, we decline to address the constitutionality of that statute. See *People v. Hampton*, 225 Ill. 2d 238, 244 (2007) ("Constitutional issues should be addressed only if necessary to decide a case."); *In re E.H.*, 224 Ill. 2d 172, 179 (2006) ("As we recently stated, courts should not compromise the

stability of the legal system by declaring legislation unconstitutional when a particular case does not require it." (Internal quotation marks omitted.)).

¶ 40 For the foregoing reasons, we reverse the judgment of the trial court and vacate defendant's conviction.

¶ 41 Reversed.