SIXTH DIVISION
November 4, 2011

No. 1-10-1404

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF ANTWON J.,	)	Appeal from the
	)	Circuit Court of
Minor-Respondent-Appellant,	)	Cook County
	)	
(The People of the State of Illinois,	)	
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 JD 4741
	)	
Antwon J.,	)	The Honorable
	)	Carl Anthony Walker,
Defendant-Appellant).	)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Cahill concurred in the judgment.

O R D E R

¶ 1 *Held:* Illinois' aggravated unlawful use of a weapon statute does not violate federal or state constitutional guarantees of the right to bear arms; the respondent may not challenge the state's unlawful possession of firearms statute where no final judgment was entered on the charge; and the Illinois Supreme Court's decision in *Kalodimos v. Morton Grove*, 103 Ill. 2d 483 (1984) is not reviewable by this court.

¶ 2 Juvenile respondent Antwon J. appeals the circuit court's adjudication of delinquency for violating Illinois' aggravated unlawful use of a weapon statute ("AUUW") (720 ILCS 5/24-

1.6(a)(1) (West 2010)) and unlawful possession of firearms statute ("UPF") (720 ILCS 5/24-3.1 (West 2008)). He was 16 years old when he was sentenced to two years of probation on the AUUW conviction. He contends the AUUW and UPS statutes are unconstitutional under the decision of the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008). But that decision, which was expressly limited to invalidating restrictions on possession of weapons in the home, has no bearing on the AUUW statute as it does not restrict the possession of weapons in the home. Because the circuit court imposed sentence on the respondent only on the AUUW adjudication, no final and appealable judgment was entered as to the UPS charge, which renders the statute not reviewable. Finally, the respondent asks that we "revisit" our supreme court's decision in *Kalodimos v. Morton Grove*, 103 Ill. 2d 483 (1984), in light of *Heller* and *McDonald v. City of Chicago*, 561 U.S. __, 130 S. Ct. 3020 (2009). While it is not the province of this court to assess our supreme court's decisions, we are unconvinced that *Heller* or *McDonald* casts doubt on his adjudications of guilt. We affirm.

¶ 3 BACKGROUND

¶ 4 On November 14, 2009, at approximately 10:40 p.m., two police officers responded to a report of shot fired near Racine and Sunnyside Streets in Chicago. One of the officers observed the respondent running through a park and saw him throw an object into some bushes. The officer searched the bushes and recovered a .45 caliber handgun loaded with eight live rounds. The respondent was arrested.

¶ 5 On November 16, 2009, the State filed a petition for adjudication of wardship, seeking a finding that the respondent was delinquent on four counts. The first three counts alleged violations of the AUUW statute for carrying an uncased, loaded, and immediately accessible firearm: (1) subsection (3)(A) (away from the respondent's abode); (2) subsection (3)(c)

(without possessing a valid Firearm Owner's Identification ("FOID") Card); and (3) subsection (3)(I) (being under the age of 21). The fourth count alleged a violation of the UPF statute for possessing a concealable firearm while under 18 years of age.

¶ 6 At a hearing before Judge Carl Walker of the Juvenile Justice Division on November 16, 2009, the State informed the court that the respondent had eight prior arrests and was currently on supervision for aggravated battery. The court held the respondent in custody until it could hear from the respondent's mother and probation officer. At a hearing on December 10, 2009, the respondent stated that he wished to plead guilty to Count I and would accept two years' probation in exchange for the State's agreement to drop Counts II through IV. The court released the defendant on electronic home monitoring, restricting his activities to home, school, church, and the doctor's office, in anticipation of an adjudication hearing.

¶ 7 On the scheduled adjudication hearing of January 6, 2010, the respondent's probation officer reported "significant issues" with the respondent's compliance with the electronic home monitoring order. The State declared withdrawn the proposed plea agreement. When the respondent was informed that he faced a possible sentence of remand to the juvenile detention center were he to plead guilty, he retracted his intention to plead guilty.

¶ 8 On February 10, 2010, an adjudicatory hearing was held. The two responding police officers testified to the events they observed leading to the respondent's arrest. The evidence established that the respondent was not in his own abode or on his own land, he did not possess a valid FOID card, and he was under 21 years of age when he threw the handgun into the bushes. The court found the respondent guilty of all four counts and adjudicated him delinquent. On March 31, 2010, the court sentenced the respondent on the AUUW counts, but not the UPF

count. It imposed two years' probation, a substance abuse treatment assessment, anger management counseling, and a fatherhood program. An appeal was filed the same day.

¶ 9 ANALYSIS

¶ 10 The respondent does not dispute he violated the AUUW and UPF statutes. Rather, he contends the statutes violate the federal and state constitutional protections of the individual right to bear arms. He further argues that in light of *Heller*, our supreme court's decision in *Kalodimos* must be revisited because it affords less protection than the protection afforded under second amendment of the United States Constitution as interpreted by the *Heller* court.

¶ 11 The State responds the AUUW statute does not violate the second amendment because it does not abridge the right to possess a firearm in the home, which is the only protection recognized by the *Heller* decision. According to the State, we should not address the merits of the respondent's claim that the UPF statute is unconstitutional because no sentence was imposed on that charge, which precludes review of the adjudication of guilt. Finally, the State argues this court lacks authority to overturn the supreme court's decision in *Kalodimos*.

¶ 12 Although the respondent did not challenge the constitutionality of the AUUW statute at trial, "a constitutional challenge to a statute can be raised at any time." *People v. Bryant*, 128 Ill. 2d 448, 454 (1989). "Whether a statute is constitutional is a question of law to be reviewed *de novo*." *People v. Aguilar*, 408 Ill. App. 3d 136, 142 (2011) (citing *People v. Morgan*, 203 Ill. 2d 470, 486 (2003)). "Our duty is to construe a statute in a manner that upholds its validity and constitutionality if it can reasonably be done." *People v. McGee*, 341 Ill. App. 3d 1029, 1032 (2003) (citing *People v. Malchow*, 193 Ill. 2d 413, 418 (2000)). "Because we assume that a statute is constitutional, [the respondent] bears the burden of showing the constitutional violation." *Aguilar*, 408 Ill. App. 3d at 142.

¶ 13 The respondent argues the AUUW statute is unconstitutional under *Heller* and *McDonald*, an argument this court has rejected more than once: *People v. Dawson*, 403 Ill. App. 3d 499 (2010); *Aguilar*, 408 Ill. App. 3d at 142-150; *People v. Mimes*, No. 1-08-2747, slip op. at 20 (Ill. App. Jun. 20, 2011) ("defendant's AUUW conviction must stand because the challenged statutory provisions do not violate either the second amendment or the Illinois Constitution.").

¶ 14 *Heller* concerned the District of Columbia's general proscription against possession of handguns anywhere within the District. *Heller*, 554 U.S. 570, 573. The Supreme Court explicitly addressed only the narrow issue of whether "prohibition on the possession of usable handguns *in the home* violates the Second Amendment to the Constitution." (Emphasis Added.) *Id.* at 573. The Court's holding was likewise circumscribed:

> "In sum, we hold that the District's ban on handgun possession *in the home* violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it *in the home*." (Emphasis Added.) *Id.* at 635.

¶ 15 The opinions of this court have been consistent regarding the holding in *Heller*. " '*Heller* specifically limited its ruling to interpreting the [second] amendment's protection of the right to possess handguns in the home, not the right to possess handguns outside of the home in case of confrontation.' " *Aguilar*, 408 Ill. App. 3d at 148 (quoting *Dawson*, 403 Ill. App. 3d at 508, 511 ("defendant's argument that the AUUW statute must be struck down as an unconstitutional

restriction on second amendment rights by the State is rejected.")). We are unpersuaded that the affirmation in *Heller* extends beyond the right to possess a firearm in one's home. The holding in *Heller* does not extend to this case, where the respondent was in possession of a firearm outside of his home.

¶ 16 The defendant's reliance on *McDonald* is equally unavailing. In *McDonald*, the Supreme Court of the United States held the second amendment is fully applicable to the States, effectively invalidating a Chicago ordinance that essentially banned possession of handguns by nearly all individuals anywhere within city limits. *McDonald*, 130 S. Ct. at 3025-26. It cautioned, however, that "incorporation [of the second amendment as applicable to the States] does not imperil every law regulating firearms." *Id.* at 3047. "The *McDonald* Court refused to expand on the holding in *Heller* that the second amendment protects 'the right to possess a handgun in the home for the purpose of self-defense.' " *Aguilar*, 408 Ill. App. 3d at 143 (quoting *McDonald*, 130 S. Ct. at 3050). Like *Heller*, *McDonald* is not controlling; it does not operate to invalidate the AUUW statute. "No reported cases have held that *Heller* or *McDonald* preclude states from prohibiting the possession of handguns outside of the home." *Aguilar*, 408 Ill. App. 3d at 149. We again reject the contention that the AUUW statute is unconstitutional.

¶ 17 The respondent argues the UPF statute is also unconstitutional. He acknowledges, however, that he was never sentenced on his conviction for violating the UPF, and that this court in *Aguilar* rejected an identical argument under the same circumstances. "[W]e find that we cannot review defendant's conviction for unlawful possession of a firearm because the trial court did not impose a sentence." *Aguilar*, 408 Ill. App. 3d at 150.

¶ 18 In an effort to avoid the clear language in *Aguilar*, the respondent urges that "the majority [in *Aguilar*] was wrong." The respondent reasons that our supreme court's decision in *People v.*

Dixon, 91 Ill. 2d 346 (1982) calls into question the holding in *Aguilar*. We rejected this same argument in *Aguilar*:

> "In *Dixon*, [appellate] jurisdiction was entertained so that a nonfinal, unsentenced conviction could be reinstated after a greater conviction was vacated. Unlike *Dixon*, defendant's conviction for AUUW has not been reversed and, therefore, we cannot review the unsentenced conviction for unlawful possession of a firearm." *Aguilar*, 408 Ill. App. 3d at 150 (citing *People v. Ramos*, 339 Ill. App. 3d 891, 906 (2003) ("we believe that *Dixon* must be narrowly construed as not sanctioning the *** review of unappealed and unsentenced convictions when the greater offense has not been reversed and vacated")).

¶ 19 As in *Aguilar*, the respondent's conviction for AUUW stands. Following *Aguilar*, the merits of the respondent's challenge to the UPF statute are not properly before us. *People v. Sandefur*, 378 Ill. App. 3d 133, 134 (2007) (affirming conviction for greater offense and having no reason to reach issue of merged conviction).

¶ 20 The respondent next urges we "revisit" our supreme court's decision in *Kalodimos*, which held that the right to possess firearms is not a "fundamental right" and is subject to "substantial infringement in the exercise of the police power." *Kalodimos*, 103 Ill. 2d at 509. The holding in *Kalodimos* has been commented on by this court. "[T]he analysis and holding in *Kalodimos* have been impliedly overruled by *Heller* and *McDonald*." *Mimes*, No. 1-08-2747, slip op. at 16; "*Kalodimos*' interpretation of section 22 of article I of the Illinois Constitution appears to provide less protection than does the second amendment." *Aguilar*, 408 Ill. App. 3d at 149-50.

¶ 21 The respondent correctly concedes, however, that "only the Supreme Court may reverse its own precedent." See *Aguilar*, 408 Ill. App. 3d at 150 (" 'The appellate court lacks authority to overrule decisions of [the supreme] court which are binding on all lower courts.' ") (quoting *People v. Artis*, 232 Ill. 2d 156, 164 (2009)); *People v. Williams*, 405 Ill. App. 3d 958, 960 (2010) ("Any reexamination of *Kalodimos* would be the task of the Illinois Supreme Court."). We leave it to the supreme court to revisit *Kalodimos*.

¶ 22 CONCLUSION

¶ 23 Neither *Heller* nor *McDonald* renders the AUUW statute unconstitutional, as the statute does not regulate gun possession in the home. We do not reach the respondent's argument that the UPF statute is unconstitutional as no judgment was entered on that charge. We leave reconsideration of *Kalodimos* to the supreme court.

¶ 24 Affirmed.