

2014 IL App (1st) 131377  
No. 1-13-1377  
Order filed March 14, 2014

Fifth Division

**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 DISTRICT

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THE CITY OF CHICAGO,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 08 MC1 245651
	)	
JOSEPH JERON,	)	
	)	The Honorable
Defendant-Appellant.	)	Anthony Calabrese,
	)	Judge, presiding.
	)	

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PRESIDING JUSTICE GORDON delivered the judgment of the court.  
Justices Palmer and Taylor concurred in the judgment.

**ORDER**

¶ 1 *Held:* As our supreme court did in *Wilson v. County of Cook*, 2012 IL 112026, and as the City asks us to do in the case at bar without objection, we reverse and remand for further proceedings to permit the trial court to develop an evidentiary record concerning: (1) how dangerous and unusual these particular weapons are (*Wilson*, 2012 IL 112026, ¶ 46); and (2) the strength of the government's justification for restricting them (*Wilson*, 2012 IL 112026, ¶ 42).

¶ 2 Plaintiff, the City of Chicago (the City), charged defendant Joseph Jeron with multiple code violations of failure to register firearms and possession of unregisterable firearms. Chicago Municipal Code § 8-20-040 (amended July 7, 1992) (failure to register a firearm); Chicago Municipal Code § 8-20-050 (amended February 7, 1997) (possession of an unregisterable firearm). The City dismissed all counts against defendant after the trial court granted his motion to suppress. The trial court subsequently denied defendant's motion for release of property with respect to seven of the firearms, namely, two unregistered long guns and five unregisterable assault weapons. The two long guns in the City's custody are a Mossberg 12-gauge shotgun and a Remington rifle; and the five unregisterable assault weapons are an Action Arms Uzi, a Colt AR-15, a Norinco Model 56S rifle, an Inland Division U.S. Carbine and a Ruger Mini 14 Carbine.

¶ 3 On this appeal, defendant challenges the trial court's ruling denying his motion for release of property. He argues that the Chicago gun registration ordinance is unconstitutional under the second amendment of the United States

constitution, which provides that "the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In his brief to this court, defendant argues that the ordinance is unconstitutional because it does not allow assault weapons to be registered.

¶ 4 In its response, the City observes that defendant has waived any challenge to the seizure of the two unregistered long arms by failing to argue it, and that is correct. Defendant has never disputed the fact that the two guns were unregistered, and in the trial court defendant flatly stated: "May I start with saying that I'm not here contesting the City cannot require people to register firearms." In his brief to this court, defendant fails to make any argument directed specifically to these two unregistered guns, and points not argued are waived. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 824 (2008) ("This court has repeatedly held that a party waives a point by failing to argue it."); Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008) ("Points not argued [in the appellant's brief] are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Defendant does vaguely argue that the "[f]ailure to timely register or re-register a vehicle" does not result in the destruction of a vehicle. However, there is no evidence in the record, and defendant does not cite to any, that he merely failed to register in a timely fashion or to re-register the two long guns. These facts are not asserted in his statement of facts, and the

statement of facts in an appellant's brief "shall contain the facts necessary to an understanding of the case." Ill. S. Ct. R. 341(h)(6) (eff. July 1, 2008). Thus, the City is correct that defendant waived any second amendment challenge to the City's seizure of these two guns.

¶ 5 In addition, the City asks us to remand defendant's appeal of the City's seizure of the five assault weapons. The City seeks further proceedings in light of the Illinois Supreme Court's decision in *Wilson v. County of Cook*, 2012 IL 112026. Defendant chose not to file a reply brief and, thus, there is no objection to the City's request.

¶ 6 In *Wilson*, as in our case, the appellant raised a constitutional challenge to Cook County's assault weapon ban. *Wilson*, 2012 IL 112026, ¶ 34. In *Wilson*, as in our case, the resolution of the constitutional issue required the court to weigh: (1) how dangerous and unusual these particular weapons were (*Wilson*, 2012 IL 112026, ¶ 46); and (2) the strength of the government's justification for restricting them (*Wilson*, 2012 IL 112026, ¶ 42). In *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), the United States Supreme Court held that the second amendment conferred an individual right to bear arms but stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions," such as prohibitions on the possession of firearms by felons and prohibitions of dangerous and unusual weapons.

¶ 7 In *Wilson*, as in our case, one of the parties asked for the opportunity to present evidence to support its arguments (*Wilson*, 2012 IL 112026, ¶ 49), and our supreme court concluded that it could not decide this issue on a motion to dismiss, in light of the inadequate record before it. The court explained:

"Without a national uniform definition of assault weapons from which to judge these weapons, it cannot be ascertained at this stage of the proceedings whether these particular attributes as defined in this Ordinance are well suited for self-defense, or sport or would be outweighed completely by the collateral damage resulting from their use, making them 'dangerous and unusual' as articulated in *Heller*." *Wilson*, 2012 IL 112026, ¶ 49.

¶ 8 Similarly, in our case, there is simply no evidence in the record on the issues we are asked to decide. Defendant's motion for release of his inventoried property simply contained a list of that property and the observation that the property was no longer the subject of a criminal prosecution. At the hearing on his motion, no evidence was introduced by either party. The City argued that the property was contraband *per se*, and defendant responded that all the cases relied on by the City, to support its contention that the property was contraband *per se*, were all pre-*Heller*. There was almost no discussion of the constitutional issues before us now, namely, the dangerousness and unusualness

of these particular weapons and the strength of the government's justification in restricting them. The trial court held that the assault weapons were contraband *per se*, under the municipal ordinance and prior case law.

¶ 9 Generally, it is the appellant's burden to supply us with an adequate record and we will dismiss an appeal if the appellant fails to supply one. *Wackrow v. Niemi*, 231 Ill. 2d 418, 428 n.4 (2008) (in the absence of a sufficient record on appeal, "a reviewing court will presume that the order entered by the trial court was in conformity with the law and had a sufficient factual basis"); *Chicago Province of the Society of Jesus v. Clark & Dickens, L.L.C.*, 383 Ill. App. 3d 435, 443 (2008). However, the appellee in this case, the City, has specifically asked us instead to remand for further proceedings to allow both sides to develop an evidentiary record. In addition, we observe that our supreme court chose not to dismiss the appeal in *Wilson* on the ground that the appellant had failed to provide an adequate record. *Wilson*, 2012 IL 2026, ¶ 52.

¶ 10 CONCLUSION

¶ 11 Thus, as our supreme court did in *Wilson* and as the City asks us to do without objection, we reverse and remand for further proceedings to permit the trial court to develop an evidentiary record concerning: (1) how dangerous and unusual these particular weapons are (*Wilson*, 2012 IL 112026, ¶ 46); and (2)

the strength of the government's justification for restricting them (*Wilson*, 2012 IL 112026, ¶ 42).

¶ 12           Reversed and remanded with directions.