

Not Reported in N.E.2d, 2011 WL 9921327 (Ill.App. 1 Dist.)
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UNPUBLISHED OPINION. CHECK COURT
RULES BEFORE CITING.

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Appellate Court of Illinois,
First District, Third Division.
The PEOPLE of the State of Illinois, Plaintiff–Appellee,
v.
Deante WEST, Defendant–Appellant.

No. 1–09–2813.
May 11, 2011.

Appeal from the Circuit Court of Cook County, Illinois. No. 08 CR 21613, [Victoria Stewart](#), Judge Presiding.

ORDER

Justice [MURPHY](#) delivered the judgment of the court:

*1 *HELD*: Where Illinois case law has answered the question of the constitutionality of the aggravated unlawful use of a weapon statute following the United States Supreme Court rulings in *District of Columbia v. Heller*, 554 U.S.570, 128 S.Ct. 2783 (2008) and *McDonald v. City of Chicago*, —U.S.—, 130 S.Ct. 3020 (2010), defendant's argument that statute falls outside of longstanding prohibitions approved of by the Supreme Court and his conviction must be reversed fails.

Following a bench trial, defendant, Deante West,

was convicted of four counts of aggravated unlawful use of a weapon (720 ILCS 5/24–1.6(a)(1) (West 2006)) (AUUW) and two counts of unlawful use of a weapon by a felon (720 ILCS 5/24–1.1(a) (West 2006)). The convictions were merged into the first count of AUUW and defendant, who had two prior convictions, was sentenced to four years' imprisonment. Defendant now appeals, arguing that following *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*, — U.S. —, 130 S.Ct. 3020 (2010), the AUUW statute must be stricken as unconstitutional and his conviction must be reversed. For the following reasons, we reject defendant's argument and affirm the holding of the trial court.

I. BACKGROUND

At trial, the State presented the testimony of Officer Brian McDevitt of the Chicago police department. McDevitt testified that around midnight on October 31, 2008, he and his partner, Officer Edward May, were on-duty and driving near the 6300 block of South Francisco Avenue in their unmarked police car when they came upon a double-parked vehicle that was blocking the road. The officers stopped approximately 25 feet from the vehicle and McDevitt saw the driver exit the double-parked vehicle. In court, McDevitt identified defendant as the driver.

McDevitt testified that defendant had a black object in his hand. McDevitt believed the object was a handgun so he exited the police car and approached defendant with his service revolver drawn and announced his office. He testified that he saw defendant remove the object from his waistband and throw it into the vehicle. May detained defendant and the officers asked the occupants of the vehicle to get out. When they exited, McDevitt saw a handgun on the driver's side floorboard.

McDevitt testified that he retrieved the handgun,

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a blue steel .357 Smith and Wesson, loaded with six .38 caliber rounds. The occupants responded that the handgun was not theirs. Defendant could not produce a firearm owner's identification card and was placed under arrest. At the police station, defendant told McDevitt that the handgun was his and he had it for protection. The parties stipulated to defendant's prior conviction for possession of a controlled substance with intent to deliver and the State rested.

Defendant presented the testimony of Jovaris Baugh, one of the passengers in his vehicle on the night defendant was arrested. Baugh testified that he and his friend, "Beardog," saw defendant driving by West 65th Street and South Mozart Street when they asked him for a ride to Baugh's girlfriend's house. They were immediately pulled over by an unmarked police car and all three were ordered out of the car, put in handcuffs, and placed in the back of the police car. Baugh testified that the police searched defendant's car and the police asked who owned the handgun they found in the vehicle. Baugh testified that there was a gun under the passenger seat of the vehicle. He stated that he did not see defendant with a handgun that night and defendant never admitted that the handgun was his.

*2 Following closing arguments, the trial court found defendant guilty of all counts. Defendant's motion for a new trial was denied and the trial court merged the counts into the first count for AUUW and sentenced defendant to four years' imprisonment. This appeal followed.

II. ANALYSIS

Defendant asserts that the facts of this case are disputed but does not advance an argument that the trial court erred in finding him guilty of AUUW. The sole issue presented to this court is defendant's claim that the AUUW statute is unconstitutional in the wake of the United States Supreme Court's examination of second amendment rights in *Heller* and *McDonald*. Defendant provides discussion of the rights of felons,

but does not provide discussion of the UUW by a felon statute, only that of the AUUW statute. Defendant notes that he did not raise this issue at trial, but asserts that a constitutional challenge to a statute may be reviewed at any time. *People v. Bryant*, 128 Ill.2d 448, 454 (1989).

Defendant recognizes that this court recently rejected this very argument. *People v. Dawson*, 403 Ill.App.3d 499 (2010); *People v. Williams*, 405 Ill.App.3d 958 (2010). Defendant respectfully requests this court revisit those decisions as outlier cases. Defendant maintains that this court has taken *dicta* from *Heller* and *McDonald* to support its finding that the AUUW statute is a constitutional and approved form of regulation. Defendant argues that a close review of the entirety of the *Heller* and *McDonald* opinions, especially the historical and deep roots of the right to bear arms requires a departure from *Dawson* and *Williams*.

Since this appeal has been briefed, this court has again rejected defendant's argument with respect to the AUUW statute. See *People v. Aguilar*, No. 1–09–0840 (February 23, 2011). Defendant cites to our supreme court's vacature of *Wilson v. Cook County*, 394 Ill.App.3d 534 (2009), vacated by *Wilson v. Cook County*, 237 Ill.2d 593 (2010), to assert that this issue requires further and renewed examination. However, about the time defendant's reply brief was filed, this court filed its opinion in *Wilson*, examining *McDonald* and coming to a conclusion similar to the criminal cases defendant challenges now. *Wilson v. Cook County*, No. 1–08–1202 (February 9, 2011).

Defendant notes that "Illinois bears the distinction of being the least hospitable state for gun rights." **Christopher Keleher**, *District of Columbia v. Heller: The Death Knell for Illinois Handgun Bans?*, 96 Ill. B.J. 402, 405 (2008). Despite his concern that Illinois is such an outlier, there has been widespread acceptance that *Heller* and *McDonald* stand for the proposition that the second amendment right is the "

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'right to possess a handgun in the home for purposes of self-defense.' " See, *Dawson*, 403 Ill.App.3d at 508, quoting *McDonald*, 130 S.Ct. at 3050.

This understanding has not been overturned in Illinois. For that reason, we adhere to the holdings in *Dawson*, *Williams* and *Aguilar*. We reject defendant's argument that the AUUW statute is unconstitutional and affirm defendant's convictions.

III. CONCLUSION

*3 For the foregoing reasons, we affirm the decision of the trial court.

Affirmed.

QUINN, P.J., and STEELE, J., concurred in the judgment.

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