

No. 1-11-1664

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).

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. 10 CR 12777
)	
DARREL R. DOSS,)	Honorable
)	Neil J. Linehan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE GARCIA delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment entered on defendant's conviction of unlawful use of a weapon by a felon affirmed over his claim that the statute defining the offense violates his constitutional right to bear arms.

¶ 2 Following a bench trial, defendant Darrel Doss was found guilty of two counts of unlawful use of a weapon by a felon (U UW) and four counts of aggravated unlawful use of a weapon (AU UW). At sentencing, the court merged defendant's convictions and sentenced him to five years' imprisonment for U UW. On appeal, defendant contends that his U UW conviction

should be reversed because the statute defining the offense violates his constitutional right to bear arms.

¶ 3 The record shows, in relevant part, that in the early morning hours of June 20, 2010, Chicago police officers Gentile and Mellett responded to a call of two black males wearing white shirts and carrying silver handguns at 6610 South Peoria Street, in Chicago. Upon their arrival at that location, Officer Gentile observed defendant, who matched that description, bend down and place a metal object next to a church fence bordering the sidewalk, then continue to walk southbound on Peoria Street. Officer Gentile "grabbed" defendant, handed him over to his partner, and retrieved the metal object, which was a loaded, silver semi-automatic handgun. The State entered into evidence a certified copy of defendant's 2009 U UW conviction, and the court found defendant guilty of two counts of U UW and four counts of A U UW. The court then sentenced him to five years' imprisonment on one count of U UW.

¶ 4 In this appeal from that judgment, defendant contends that his U UW conviction must be reversed because the statute defining the offense violates his second amendment right to bear arms. Although defendant did not preserve this issue in the circuit court, a challenge to the constitutionality of a statute may be raised at any time (*People v. Bryant*, 128 Ill. 2d 448, 454 (1989)), and we review such a challenge *de novo* (*People v. Carpenter*, 228 Ill. 2d 250, 267 (2008)).

¶ 5 Defendant claims that the U UW statute (720 ILCS 5/24-1.1(a) (West 2010)) criminalizes the constitutional right to bear arms as recognized by the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010). In *Heller*, 554 U.S. at 635, the Supreme Court held that the second amendment precluded the District of Columbia from banning the possession of handguns in the home and from prohibiting individuals from rendering those firearms operable for the

purpose of self-defense. In *McDonald*, ___ U.S. ___, 130 S. Ct. at 3050, the Supreme Court held that the right to keep handguns inside the home for self-defense was incorporated in the due process clause of the fourteenth amendment.

¶ 6 The State responds that defendant has misconstrued the holdings in *Heller* and *McDonald* which expressly exclude convicted felons from their purview. The State notes that, in both cases, the Supreme Court explained that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." *Heller*, 554 U.S. at 626; see also *McDonald*, ___ U.S. ___, 130 S. Ct. at 3047.

¶ 7 In *People v. Williams*, 2011 IL App (1st) 091667-B, ¶ 16, this court rejected the same challenge to the constitutionality of the U UW statute raised by defendant here. Citing the language in *Heller* and *McDonald* which defended traditional prohibitions on the possession of firearms by felons, this court found that the second amendment does not permit a convicted felon to possess a loaded firearm under any appropriate level of scrutiny. *Williams*, 2011 IL App (1st) 091667-B, ¶ 16. This court also noted that the limited holdings in *Heller* and *McDonald* recognizing the right to possess handguns in the home did not apply to defendant who was found in possession of a handgun while standing on a public street. *Williams*, 2011 IL App (1st) 091667-B, ¶ 16. Given the nearly indistinguishable circumstances in this case, we see no reason to depart from our prior decision in *Williams*, and continue to find the U UW statute constitutional.

¶ 8 In reaching this conclusion, we find defendant's reliance on *De Jonge v. Oregon*, 299 U.S. 353 (1937) and *Texas v. Johnson*, 491 U.S. 397 (1989) misplaced. In *De Jonge*, 299 U.S. at 362, 364-65, defendant was criminally charged with participating in a Communist Party meeting in violation of the fundamental right to peaceable assembly. In *Johnson*, 491 U.S. at 399, 420, defendant was convicted of desecrating a flag in violation of the right to free speech.

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In his attempt to analogize his situation to that of the accused in *De Jonge* and *Johnson*, defendant overlooks the fact that he is a convicted felon, and, thus, among a class of people who the Supreme Court recognized may be lawfully, and constitutionally, prohibited from possessing a firearm. This crucial fact clearly distinguishes this case from those relied upon by defendant.

¶ 9 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 10 Affirmed.