

No. 1-09-3211

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
)	Cook County
Plaintiff-Appellee,)	
)	
v.)	No. 08 CR 20849
)	
KEVIN WILLIAMS,)	
)	Honorable
Defendant-Appellant.)	Jorge Luis Alonso,
)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

¶ 1 *Held:* Upon remand from a supervisory order from the Illinois Supreme Court, defendant's conviction for aggravated unlawful use of a weapon was reversed where the form of the offense for which defendant was convicted was previously held unconstitutional by the Illinois Supreme Court. The \$5 court system fee imposed by the circuit court is also vacated.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Kevin Williams (Williams) was found guilty of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-

1.6(a)(1), (a)(3), (d) (West 2008)) and sentenced to 24 months' probation. Williams argues he was denied a fair trial based on two contentions grounded on the State's closing arguments: (1) the prosecutor improperly argued that a witness was more credible than Williams because the witness was a police officer; and (2) the prosecutor misstated the evidence by telling the jury fingerprints on the handgun were left by Williams. Williams also contends that the AUUW statute violates his constitutional right to bear arms, and that a \$5 court system fee was improperly assessed. On appeal, this court affirmed the conviction but vacated the \$5 court system fee. *People v. Williams*, 2011 IL App (1st) 093211-U. The Illinois Supreme Court subsequently entered a supervisory order directing us to vacate our judgment and reconsider in light of our supreme court's decision in *People v. Aguilar*, 2013 IL 112116. *People v. Williams*, No. 113385 (Jan. 29, 2014), 2014 WL 527516 (Ill. 2014). Accordingly, we now vacate our prior judgment in this matter and, following our reconsideration of the appeal, reverse the conviction and vacate the \$5 court system fee.

¶ 3

BACKGROUND

¶ 4 The record on appeal indicates the following facts. On October 29, 2008, Williams was charged by information with six counts of AUUW. On October 14, 2009, the date trial in this case commenced, the circuit court entered an order indicating counts II, III, IV, V, and VI were dismissed by *nolle prosequi*. The remaining count I charged a violation of section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3) (West 2008)).

¶ 5 At trial, Chicago police officer Robert Vella testified that at approximately 8:22 p.m. on October 20, 2008, he was patrolling the area near Winchester Avenue and 49th Street in Chicago in an unmarked vehicle when he observed Williams in the street holding his side. Officer Vella, based on his 20 years of experience as a police officer, believed that the manner in which

Williams was holding his side indicated he was holding a handgun. Officer Vella exited his vehicle to investigate. Williams made eye contact with Officer Vella, then turned and ran down an alley. Officer Vella drew his weapon and gave chase. During the chase, Officer Vella observed defendant remove a handgun from his waistband and drop it to the ground. Officer Vella retrieved the weapon, continued his pursuit of Williams, and radioed the whereabouts and description of Williams. Officer Vella radioed the address of "4928 South Winchester," but soon realized the gangway into which Williams ran was located at 4940 South Winchester Avenue. Officer Vella did not transmit another radio message correcting the information. Officer Vella lost sight of Williams as Williams ran into a gangway. As Officer Vella ran into the same gangway, he saw Officers Kevin Killen and John O'Connor detaining Williams, who was breathing heavily and sweating. The recovered weapon contained live ammunition. Officer Vella inventoried the handgun and ammunition, but did not have the weapon tested for fingerprints.

¶ 6 Officer Killen testified that at approximately 8:20 p.m. on October 20, 2008, he and Officer O'Connor responded to a radio dispatch directing them to 4940 South Winchester Avenue. Upon arriving at that address, Officer Killen observed Williams, who matched the description received by radio, run out of a gangway. Officers Killen and O'Connor detained Williams, who was sweating and breathing heavily. Officer Vella arrived shortly thereafter and identified Williams as the individual he observed dropping a handgun during the chase.

¶ 7 Williams testified on his own behalf. According to Williams, at approximately 8:30 p.m. on October 28, 2008, he was leaving his house at 4940 South Winchester Avenue to play basketball. As he left, a police officer approached him and asked what was going on. Williams replied he did not know. After speaking with the officer for a couple of minutes, a second officer

approached and asked whether "[Williams] was the guy," and the first officer responded affirmatively. Williams was placed under arrest.

¶ 8 Following closing arguments the jury was instructed in part that the elements of the offense of aggravated UUC were: (1) defendant knowingly carried on or about his person a firearm; (2) when defendant did so, he was not on his land, in his abode, or in his fixed place of business; and (3) the firearm was uncased, loaded, and immediately accessible at the time of the offense. The jury deliberated and found Williams guilty of aggravated UUC.

¶ 9 On November 3, 2009, Williams filed a posttrial motion for a judgment notwithstanding the verdict or a new trial. The trial court denied the motion and proceeded to a sentencing hearing, during which the trial judge specifically noted Williams was "here on a [c]lass 4 felony." Following a consideration of factors in aggravation and mitigation of the offense, the trial judge sentenced Williams to two years' probation and imposed \$300 in fines and fees, including a \$5 court system fee.

¶ 10 Williams filed a timely notice of appeal to this court. On November 10, 2011, this court entered an order affirming the conviction but vacating the \$5 court system fee. *People v. Williams*, 2011 IL App (1st) 093211-U. The Illinois Supreme Court subsequently entered a supervisory order directing us to vacate our judgment and reconsider in light of our supreme court's decision in *People v. Aguilar*, 2013 IL 112116. *People v. Williams*, No. 113385 (Jan. 29, 2014), 2014 WL 527516 (Ill. 2014). Accordingly, we vacate our prior judgment in this matter and turn to reconsider the appeal in light of the *Aguilar* decision.

¶ 11 ANALYSIS

¶ 12 Although Williams raises a number of arguments on appeal, his argument that the provision of AUUC statute under which he was convicted violates his constitutional right to

bear arms, as guaranteed by the second amendment to the United States Constitution (U.S. Const., amend. II), is dispositive of this case. In *Aguilar*, which was modified upon denial of rehearing on December 19, 2013, our supreme court determined "whether the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) [of the AUUW statute] violates the second amendment right to keep and bear arms." *Aguilar*, 2013 IL 112116, ¶ 18. Section 24-1.6 of the AUUW statute provides in pertinent part:

"(a) A person commits the offense of aggravated unlawful use of a weapon when he or she knowingly:

(1) Carries on or about his or her person or in any vehicle or concealed on or about his or her person except when on his or her land or in his or her abode, or fixed place of business any pistol, revolver, stun gun or taser or other firearm; or

(2) Carries or possesses on or about his or her person, upon any public street, alley, or other public lands within the corporate limits of a city, village or incorporated town, except when an invitee thereon or therein, for the purpose of the display of such weapon or the lawful commerce in weapons, or except when on his or her own land or in his or her own abode or fixed place of business, any pistol, revolver, stun gun or taser or other firearm; and

(3) One of the following factors is present:

(A) the firearm possessed was uncased, loaded, and immediately accessible at the time of the offense[.]

* * *

(d) Sentence. Aggravated unlawful use of a weapon is a Class 4 felony; a second or subsequent offense is a Class 2 felony for which the person shall be sentenced to a

term of imprisonment of not less than 3 years and not more than 7 years. Aggravated unlawful use of a weapon by a person who has been previously convicted of a felony in this State or another jurisdiction is a Class 2 felony for which the person shall be sentenced to a term of imprisonment of not less than 3 years and not more than 7 years."

720 ILCS 5/24-1.6 (West 2008).

The *Aguilar* court held that the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) violated the second amendment right to keep and bear arms and, therefore, the court reversed the defendant's conviction for AUUW under that section. *Aguilar*, 2013 IL 112116, ¶ 22.

¶ 13 In this case, the record on appeal establishes Williams was convicted of the Class 4 form of section 24-1.6(a)(1), (a)(3)(A), (d) of the AUUW statute. Accordingly, in light of our supreme court's decision in *Aguilar*, the conviction in this case must be reversed. *Aguilar*, 2013 IL 112116, ¶ 22.

¶ 14 The remaining issue is the imposition of the \$5 court system fee (55 ILCS 5/5-1101(a) (West 2008)). Williams contends, and the State agrees, that we must vacate because the enabling statute permits such a fee only for vehicular violations. See *People v. Williams*, 394 Ill.App.3d 480, 483 (2009) (finding the court system fee applies only to vehicle offenses and vacating its imposition where the defendant was convicted of being an armed habitual offender). We agree, as we did in this court's original decision. We additionally note the enabling statute permits the imposition of the \$5 fee "on a judgment of guilty or a grant of supervision" (55 ILCS 5/5-1101(a) (West 2008)), and thus would not apply in light of our reversal of the conviction in this case. Thus, we again vacate the \$5 court system fee.

¶ 15 **CONCLUSION**

¶ 16 For the aforementioned reasons, we reverse the judgment of the circuit court.

1-09-3211

¶ 17 Reversed.