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SIXTH DIVISION
June 20, 2014

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. 06 CR 14791
)	
MAURICE WILLIAMS,)	The Honorable
)	Timothy Joyce,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

¶1 *HELD:* Upon the entry of a Supervisory Order from the Illinois Supreme Court directing us to vacate our judgment and reconsider our case in light of *People v. Aguilar*, 2013 IL 112116, defendant's conviction for aggravated unlawful use of a weapon is reversed where the form of the offense for which defendant was convicted was previously held unconstitutional by the Illinois Supreme Court.

¶2 Following a jury trial defendant, Maurice Williams, was convicted of one count of aggravated unlawful use of a weapon (AUUW) (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West

2006)). Defendant was sentenced to 30 months' probation and 5 months in the Cook County department of corrections, time served.

¶3 On appeal defendant contends that (1) the trial court violated his right to confront witnesses against him when the court did not allow him to question the detectives who shot him during his arrest about a prior incident where the same detectives shot and killed a fleeing suspect and the City of Chicago settled out of court with the estate of the deceased; and (2) the statute creating the offense of aggravated unlawful use of a weapon violates the individual right to bear arms. On appeal, this Court, in a 2-1 decision with Justice Gordon dissenting, initially affirmed defendant's conviction, however, the Illinois Supreme Court subsequently entered a supervisory order directing us to vacate our judgment and reconsider our prior decision in light of the supreme court's decision in *People v. Aguilar*, 2013 IL 112116. Accordingly, upon reconsideration of the appeal, we reverse the conviction.

¶4 BACKGROUND

¶5 Defendant was arrested and charged with two counts of aggravated assault, for allegedly pointing a rifle and a handgun at Detectives Brian Forberg and Kevin Eberle, and with aggravated unlawful use of a weapon based on allegations that he was carrying uncased, loaded and immediately accessible firearms in public.

¶6 Prior to trial defendant filed a motion *in limine* seeking to admit evidence of an unrelated civil lawsuit that had been settled out of court involving Detectives Forberg and Eberle. The lawsuit involved an allegation of an unjustified shooting of a fleeing suspect. In defendant's motion, he claimed that he was unarmed and that the detectives falsely accused him of pointing a gun at them to justify the fact that they shot defendant. Defendant sought to admit this evidence to demonstrate the officers' "*modus operandi*" of falsifying evidence to justify the shooting of an

unarmed civilian who was fleeing, " to show the officers' intent, and to rebut their self-defense claim. The trial court denied the motion, ruling that the evidence (1) was not relevant to any issue in the case and was not "*modus operandi*," (2) would unfairly prejudice the State, and (3) was "collateral and distracting" to the question of defendant's guilt. Defendant's motion to reconsider raising the same arguments, as well as an additional claim that the prior shooting could affect the detectives' credibility, was denied by the trial court. On appeal, defendant has abandoned the claim that the evidence was relevant to *modus operandi* and self-defense, arguing that the unrelated shooting was admissible as it went to the detectives' credibility, bias and motive to testify falsely.

¶7 At trial, Phillip Willis was called as a witness for the State. He testified that on May 20, 2006, his nephew was murdered and the police were investigating the homicide. On May 22, 2006, Willis contacted Detectives Eberle and Forberg and told them that he heard that the killer, nicknamed Pig, lived near 68th and Calumet Avenue and was in the area.

¶8 Detectives Forberg and Eberle picked Willis up from his home in an unmarked car and they drove to 68th and Calumet. They saw Pig's car traveling on Calumet and pursued him. Three people were in the car, including Pig. Pig turned and slowed down as if he was going to stop, but then drove off. Pig did this two or three times, after which a man jumped out of the car from the backseat and fled. Although Willis could not see the man's face, he did notice that he was holding a sack in his hand as he ran. The man crouched as he ran and something was under his arm sticking up out of a bag that could have been a rifle. The man ran on the sidewalk past the police car toward Calumet and turned the corner. Willis remained near the police car on the block and heard gunshots once the detectives turned the corner. Once the man jumped out of the

car, Pig waited a few seconds and drove off. Willis did not see anyone throw anything out of Pig's car or anyone else exit Pig's car.

¶9 On May 23, 2006, at approximately 5:50 a.m., Willis went to the police station where he spoke with detectives and Assistant State's Attorney (ASA) Planey. At trial, Willis did not remember talking to ASA Planey, but he identified a handwritten statement which he acknowledged he signed on May 23, 2006. Willis also said that at the time he signed the statement he told ASA Planey the truth. In his statement to ASA Planey, Willis told her that (1) the man had a rifle in his hand; (2) the police told him to stop and identified themselves; (3) the man with the rifle ran and the police chased him; and (4) he saw the man turn toward the detectives with the rifle and other weapons in his hand.

¶10 On cross-examination, Willis testified that he did not see the man who exited the car point a rifle or a handgun at the detectives and that he did not see the man turn around. He also admitted to talking to Detective Nolan on May 22, 2006, at the station but claimed not to remember telling Detective Nolan that he ran down Prairie after the detectives or that he saw the offender lean to the left and fire a gun. Willis testified that he did not see any fire coming from the offender's gun. Willis said that he saw the offender run north on Prairie toward 69th Street and that he did not see the offender drop the bundle he was carrying. Detective Nolan testified that Willis told him that he saw the offender fire a weapon.

¶11 ASA Planey testified that on May 23, 2006, she was assigned to this investigation. She went to the police station where she spoke with Willis in the presence of Detective Richter for 20 to 30 minutes. She memorialized in writing Willis's oral statement, which was admitted into evidence. She testified that Willis told her that as the man ran by, he noticed that the man had a rifle in his hand; that both detectives jumped out of the police car and yelled, "Halt, Police"; that

the man with the rifle was also carrying a bundle of weapons in his sweatshirt; that he saw the man with the rifle turn toward the detectives while he was still holding the rifle and the other guns; and that he heard the detectives yell "police, police" and then heard a shot.

¶12 Detectives Forberg and Eberle both testified, in summary, as follows. They picked up Willis to look for the suspect in his nephew's murder. At Willis' direction, they went to the area of 68th and Calumet, where Pig's grandmother lived. When driving on Calumet, they saw Pig's red Dodge Stratus. After the Dodge turned west onto 70th Street, they activated their lights in an attempt to curb the vehicle. The car made several turns toward the curb as if to stop; however, each time the car pulled back into the street and continued driving. Defendant jumped out of the car carrying a rifle and the two detectives exited their car. Defendant ran toward them pointing a rifle in their direction. Detective Eberle told defendant to stop and drop the weapon, but he did not comply. Detectives Eberle and Forberg then fired in defendant's direction. As defendant ran, he fell down and dropped the rifle, got up and ran. As defendant approached the intersection of Prairie and 70th Street, defendant pointed a dark-colored handgun at them. Both detectives again fired at defendant. Defendant then ran north on Prairie, and Detective Forberg fired a shot at defendant after defendant again pointed the handgun at them. Defendant fell again, got up and continued running.

¶13 After defendant turned east onto 69th Place, the detectives lost sight of him briefly, and Detective Forberg then saw defendant run into an alley. Detective Forberg approached the alley and saw defendant jump out and point a handgun at him. Detective Forberg fired and defendant jumped back out of sight. Other units came to the scene and searched, but could not find defendant. Eventually Detective Forberg heard a dispatch that someone had called 911 and told them the suspect was hiding in a garbage can. Detective Forberg saw police apprehend

defendant and take him into custody. Detective Forberg identified defendant. When Detective Forberg arrived back at his squad car, he saw a rifle and two handguns.

¶14 The parties stipulated that Detective Jennifer Flower would testify that on May 23, 2006, she and 38 other officers and a canine unit took part in the investigation of the May 23, 2006, incident. The handgun defendant allegedly had in the alley was never recovered. Other evidence introduced through various witnesses called by the State included testimony that a fired cartridge case was located at 70th Street and Prairie Avenue, three fired cartridge cases were located at 244 East 70th, two cartridge cases were located across the street at about 223 East 70th, a metal fragment was located at about 242 East 70th, a copper jacket was located in the rear yard at 6923 South Prairie, and at 244 East 70th on the sidewalk, a rifle, a Colt .38 handgun partially inside a Crown Royal bag, a .357 Magnum handgun, a plastic banana-shaped magazine and a piece of the wooden handle of the .38 were recovered. In the street at 308 East 69th Street, police recovered a long-sleeved white sweatshirt with blood on it, and at 314 East 69th Place, they recovered another fired cartridge case. The banana clip contained 22 live rounds and the 2 handguns each contained 6 live rounds. All the recovered weapons were in firing condition. The weapons were examined; however, no latent prints were found on them.

¶15 ASA Peter Garbis testified that on May 23, 2006, he was assigned to the felony review unit of the Cook County State's Attorney's office. At 5 p.m. he went to Christ Hospital to interview defendant. He spoke to defendant at 7:20 p.m. Defendant had undergone surgery and was on pain medication. ASA Garbis gave defendant his *Miranda* warnings and defendant agreed to speak to him. Defendant told him that on the previous day, defendant's friends, Face and Pig, picked defendant up in Face's red car. Defendant was in the backseat and there were two guns in the rear seat. As they drove, Face stopped and picked up a rifle. When the police

car pulled up behind them and turned on its lights, defendant was frightened so he jumped out of the car with the weapons and the police shot at him. Defendant threw the guns on the ground and ran because he was scared. Defendant said he was shot while running from the detectives and that he hid in a garbage can. Defendant denied ever shooting at anyone. ASA Garbis said defendant was lucid during the conversation and defendant's speech was clear.

¶16 Defendant presented the testimony of Officer Ford to perfect impeachment. Officer Ford said he drafted a general offense case report and that the report stated that Detective Forberg said defendant dropped the weapon but did not mention that defendant fell or that it was a rifle.

¶17 Detective Kelley was also called by defendant. Detective Kelley testified that he wrote a detective supplemental report. Detective Kelley recalled that Detective Forberg told him that the suspect fell down, but he did not recall him saying that he dropped a rifle.

¶18 Trauma nurse Thomas Giusto testified that when he came on duty at 3 p.m., on May 23, 2006, defendant was his patient. On May 23, 2006, after surgery to repair damage caused to his colon from a gunshot wound to his left flank, defendant was taken to a room in the trauma unit at approximately 3 p.m. Defendant had a patient-controlled analgesia for morphine, which is a pump that the patient uses to administer pain medication to himself. Between Giusto's eight-hour shift from 3 p.m. to 11 p.m., defendant used 33.2 milligrams of morphine.

¶19 On cross-examination, Giusto testified that based on defendant's trauma flow chart, defendant had two gunshot wounds, one on the left lower abdomen and one on the left lower back located in the flank, possibly a through-and-through gunshot wound. Defendant did not have a gunshot wound in the middle of his lower back. Defendant's physical therapy form indicated that defendant was shot in his right upper extremity and in his abdomen. Giusto also testified that at approximately 9 p.m. on May 23, 2006, he and defendant signed a consent-for-

operation form after being informed of what the surgery was and all of the risks associated with the surgery. Either Giusto or a doctor would have made sure defendant understood what this consent form meant and defendant would have been in a condition to sign the consent form.

¶20 Defendant testified that after he got off a bus at 95th Street and State Street he stopped at McDonald's, got a burger and began to walk home. Pig (Ahmad Hicks) offered him a ride home. Defendant got in the rear seat, which was full of garbage. An unknown male was seated in the front passenger seat. Pig introduced the passenger as Face. Defendant did not see any weapons in the car at that time. As Pig turned from 69th Street onto southbound Calumet, defendant noticed an unmarked police car following them with its lights on. Defendant told Pig to pull over because the police were behind him when they were near 70th Street. Pig started to slow down as if he was going to stop, but due to construction on Calumet he could not stop. Pig turned west onto 70th Street, but did not pull over, and Pig and Face were leaning forward doing something. Defendant was still telling Pig to pull over when Pig tossed a black handgun toward the back of the car where defendant was sitting. Defendant jumped out the car as soon as he saw the gun, even though the car was still moving slowly. Defendant did not have anything in his hands and he never held or ran with a rifle or a banana clip.

¶21 Defendant testified that he ran east toward Prairie and saw the police still coming across the intersection. Defendant turned north on Prairie and kept running. As he got to the corner he heard gunshots and thought that the police were shooting at Pig and Face because they had a gun. Defendant kept running north on Prairie until he realized they were shooting at him. He never turned back to see who was shooting. Defendant ran faster, crossed into the middle of the street, and fell because he got shot in the small of his back. Defendant kept running, but he never had a weapon and did not point a weapon at the officers. Defendant turned east at the corner of 69th

Place and got shot in the back of his right arm. Defendant turned north down an alley off of 69th Place and he got shot in his side. As soon as he got into the alley defendant dove into a garbage can because he was afraid of being killed. Police came, flipped the can over, grabbed defendant when he fell out and cuffed him. Defendant passed out from the pain in his right arm when the police grabbed him. The next thing defendant remembered was waking up in the hospital. Defendant did not recall speaking to ASA Garbis or Detective Kelley at the hospital.

¶22 On cross-examination, defendant testified that he was suing Detectives Forberg and Eberle for shooting him. He was positive they shot him three times, but the complaint in his lawsuit says he was only shot twice by them.

¶23 Defendant then presented the stipulated testimony of Detective Nolan, who would testify that on May 22, 2006, he spoke with Phillip Willis, who told him that he "saw offender turn at, near Prairie, lean to the left and fired. Don't know how many times." He would also testify that Willis told him that he "chased after the detectives down Prairie. Once he got to 69th Place, he stopped." Defendant then rested his case.

¶24 The jury found defendant guilty of aggravated unlawful use of a weapon with a rifle and not guilty of the other charges. Defendant was sentenced to 30 months' probation and 5 months in the Cook County department of corrections, time served.

¶25 ANALYSIS

¶26 I. Violation of Right to Confront Witnesses Against Him

¶27 We will not address this claim as the resolution of the constitutionality of the AUUW statute is dispositive.

¶28 II. Constitutionality of AUUW Statute

¶29 Defendant's argument that his AUUW conviction must be reversed because the relevant provisions of the AUUW statute criminalize the open carrying of a loaded rifle outside of one's home, land or fixed place of business and, thus, is facially violative of both state and federal constitutional guarantees of the right to keep a firearm for self-defense is dispositive of this case.

¶30 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.

¶31 Section 24-1.6 of the AUUW statute at issue here provides, in pertinent part, as follows:

"(a) A person commits the offense of [AUUW] when he or she knowingly:

(1) Carries 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 *** or other firearm; or

(2) Carries or possesses on or about his or her person, upon any *** public lands within the corporate limits of a city, village or incorporated town, *** except when on his or her own land or in his or her own abode or fixed place of business, any pistol, revolver *** 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[.]" 720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(A) (West 2006).

¶32 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.

¶33 In this case, the record on appeal establishes defendant 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.

¶34 CONCLUSION

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

¶36 Reversed.