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FIRST DIVISION
May 19, 2014

No. 1-12-2012
2014 IL App (1st) 122012-U

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 11 CR 2913
)	
ALLEN FIELDS,)	Honorable
)	Matthew Coghlan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE CONNORS delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* Conviction reversed where defendant's prior conviction for Class 4 AUUW could not serve as predicate offense for unlawful possession of a weapon by a felon.

¶ 2 Following a jury trial, defendant Allen Fields was convicted of unlawful possession of a weapon by a felon and sentenced to four years in prison. On appeal, defendant contends, in part, that his conviction must be reversed pursuant to *People v. Aguilar*, 2013 IL 112116. Finding this issue dispositive, we reverse.

¶ 3 The record reveals that after an incident in which police found a gun in a vehicle, defendant was charged with multiple weapons-related offenses. Before trial, the State nolo-prossed all of the charges except for one count of unlawful use or possession of a weapon by a felon, which stated that defendant had possessed a handgun "after having been previously convicted of the felony offense of aggravated unlawful use of a weapon under case number 08CR17581***."

¶ 4 At trial, Officer Antonio DiCarlo testified that on the night of February 8, 2011, after a conversation with the victim of an aggravated battery, he was looking for three armed men, including one named Jovan Webb. Additionally, Officer DiCarlo was looking for a snub-nosed revolver and two other weapons. At 7010 South Eggleston, Officer DiCarlo observed a vehicle that was double parked and contained two occupants. After Officer DiCarlo determined that one of the occupants was Jovan Webb, both occupants were placed in custody. While Officer DiCarlo looked through the vehicle for weapons, defendant approached and stated, "[T]his is my vehicle[.] What are you doing[?]" Defendant was then also placed in custody in a police car. Officer DiCarlo resumed his search for weapons, but did not find any. When he asked defendant whether a gun was in the vehicle, defendant responded affirmatively, and added that he would have to show Officer DiCarlo where it was. Officer DiCarlo and defendant returned to defendant's vehicle, where defendant indicated that a weapon was located behind the seatbelt assembly. Following defendant's instructions, Officer DiCarlo opened the assembly and found that it contained a loaded snub-nosed revolver, which he then recovered. After Officer DiCarlo advised defendant of his *Miranda* rights, defendant stated that the gun was his and that he needed it for protection because he had been robbed several times.

¶ 5 The parties stipulated that defendant had been previously convicted of a qualifying felony offense.

¶ 6 Following closing arguments and deliberations, the jury found defendant guilty of unlawful possession of a weapon by a felon. Defendant was sentenced to four years in prison.

¶ 7 On appeal, defendant contends, in part, that his conviction should be reversed because the predicate felony used to prove an element for the instant offense was struck down by *Aguilar*, 2013 IL 112116. Defendant argues that because he did not have any other prior convictions for valid offenses, the State failed to prove an essential element of its case.

¶ 8 To sustain a conviction for unlawful possession of a weapon by a felon, the State must prove that the defendant knowingly possessed on or about his person any firearm and that the defendant was previously convicted of a felony. 720 ILCS 5/24-1.1(a) (West 2010). The charging instrument for the instant offense indicates that the State intended to use defendant's previous conviction for aggravated unlawful use of a weapon (AUUW) under case number 08 CR 17581 (the 2008 conviction) as the predicate felony. However, the documents that defendant appended to his reply brief, including the charging instrument, circuit court's docket, and sentencing order for the 2008 conviction, show that defendant's previous conviction was for the Class 4 version of AUUW (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) that was declared unconstitutional in *Aguilar*, 2013 IL 112116, ¶ 22. See *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010) (a reviewing court may take judicial notice of public records and other judicial proceedings). When a statute is held unconstitutional, it is void *ab initio*, meaning that the statute is "constitutionally infirm from the moment of its enactment" and unenforceable. *People v. Blair*, 2013 IL 114122, ¶ 30.

¶ 9 We are bound to apply *Aguilar's* holding because defendant's case was pending on direct appeal when *Aguilar* was decided. See *People v. Gersch*, 135 Ill. 2d 384, 399 (1990); *People v. Dunmore*, 2013 IL App (1st) 121170, ¶ 10. Pursuant to *Aguilar*, we must reverse defendant's conviction for unlawful possession of a weapon by a felon. The State was required to prove defendant's previous felony conviction, but his previous AUUW conviction was rendered void and therefore cannot serve as the predicate felony. See *People v. McFadden*, 2014 IL App (1st) 102939, ¶ 43 (stating that because Class 4 AUUW was declared unconstitutional and void *ab initio*, it "cannot now, nor can it ever, serve as a predicate offense for any charge"). Accordingly, lacking an essential element, defendant's conviction for unlawful possession of a weapon by a felon must be reversed outright.

¶ 10 In light of this result, we need not address the other issues that defendant raises on appeal. Additionally, we note that we are not vacating defendant's 2008 conviction pursuant to *Aguilar* and we decline to address whether formal proceedings for collateral relief may be available to defendant to do so. Further, we decline to issue an advisory opinion as to whether *Aguilar* applies retroactively to cases on collateral review or whether the State could reinstate charges it dismissed as part of the 2008 proceedings if defendant is successful in vacating that conviction. See *People v. Fields*, 2014 IL App (1st) 110311, ¶ 45; *McFadden*, 2014 IL App (1st) 102939, ¶ 44; *Dunmore*, 2013 IL App (1st) 121170, ¶¶ 12-13.

¶ 11 For the foregoing reasons, the judgment of the circuit court is reversed.

¶ 12 Reversed.