

No. 1-12-2926

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. 11 CR 20727
)	
JERMAINE GATES,)	Honorable
)	Clayton J. Crane,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Delort and Justice Connors concurred in the judgment.

O R D E R

- ¶ 1 *Held:* The sentence imposed on defendant's Class 2 felony offense of UUWF affirmed over contention that it was improperly enhanced without proper notice.
- ¶ 2 Following a bench trial, defendant Jermaine Gates was found guilty of unlawful use of a weapon by a felon (UUWF) and driving with a revoked license, then sentenced to a single term of eight years in prison. On appeal, defendant contends that the UUWF conviction was

improperly enhanced from a Class 3 to a Class 2 offense because the State failed to provide him notice that it was seeking an enhanced classification of the offense in the charging instrument. He thus requests that this court vacate his sentence and remand for resentencing as a Class 3 offender.

¶ 3 The charges filed against defendant in this case arose from an incident that occurred on November 10, 2011, involving defendant, his wife and their two stepdaughters on the west side of Chicago. As a result, defendant was arrested and charged by indictment with multiple counts of aggravated kidnapping, kidnapping, aggravated domestic battery, unlawful restraint, UUWF and driving with a revoked license. The UUWF charge specified that defendant had unlawfully possessed a knife after having been previously convicted of felony residential burglary under case No. 98 CR 0228201.

¶ 4 The evidence adduced by the State at trial showed that about 9:19 on the night of the incident, Chicago police officer Mario Cruz and his partner were on routine patrol duty when they encountered defendant's wife, Virginia Gates, and his two stepdaughters T.S. and L.H., aged 15 years and 11 years respectively, at the intersection of Independence Boulevard and Roosevelt Road. They were standing at a gas station in their night clothes with no jackets or shoes, and Gates flagged down the squad car. The officers noticed that Gates had a plastic zip tie and duct tape on her wrist, and T.S. had bruises and cuts on her face. Gates was hysterical and told Officer Cruz that defendant had held a knife to her throat, bound her wrists and ankles with plastic zip ties and duct-taped her mouth. T.S. stated that defendant slapped and molested her, before her mother broke free and they managed to flee together. Officer Cruz drove the trio to their residence so that Gates could pick up coats and shoes for herself and her daughters.

¶ 5 As Officer Cruz and the two children waited for Gates in the car, T.S. observed defendant's car being driven southbound in an alley near their house. Officer Cruz informed Chicago police sergeant Thomas Keane of the situation, and he pursued the car, and had the driver (defendant) stop. Sergeant Keane testified that as he approached the car, he asked defendant for his driver's license, and defendant stated that he did not have one. He then took defendant into custody, and in the custodial search that followed, an open folding utility knife was found in his left front pants pocket.

¶ 6 None of the alleged victims testified, and the State concluded its case-in-chief with the proffer of defendant's driving abstract, which showed that he was driving on a revoked license that night, and a certified copy of defendant's prior conviction in case No. 98 CR 0228201, showing that he was convicted of the Class 2 felony offense of residential burglary in 1998. Both the abstract and the certified copy of the conviction were entered into evidence. Following the arguments of counsel, the court found defendant not guilty of all charges, except UUWF and driving with a revoked license.

¶ 7 At sentencing, arguments were presented in aggravation and mitigation, and defendant exercised his right of allocution. In announcing its sentencing decision, the trial court merged defendant's driving with a revoked license conviction into UUWF, and sentenced defendant to eight years' imprisonment and two years of mandatory supervised release (MSR) as a Class 2 offender.

¶ 8 In this appeal from that judgment, defendant solely contends that the UUWF conviction was improperly enhanced from a Class 3 to a Class 2 offense because the State failed to give him notice as required by statute that it was seeking an enhanced classification of the offense in the

charging instrument. Since this issue involves a question of law, we review it *de novo*. *People v. Caballero*, 228 Ill. 2d 79, 82 (2008).

¶ 9 In support of his contention that the State should have provided him notice that it was charging him of an enhanced Class 2 felony pursuant to section 111-3(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(c) (West 2010)), defendant cites *People v. Easley*, 2012 IL App (1st) 110023, *aff'd in part and rev'd in part*, 2014 IL 115581, *People v. Whalum*, 2012 IL App (1st) 110959, *aff'd in part and rev'd in part*, 2014 IL App (1st) 110959-B, and *People v. Griham*, 399 Ill. App. 3d 1169 (2010). We observe, however, that the supreme court recently considered this issue and decided that when a prior conviction is already a required element of the offense as alleged in the charging instrument, notice of enhancement under section 111-3(c) is not required. *Easley*, 2014 IL 115581 at ¶¶ 19, 22-26.

¶ 10 In the case at bar, the State charged defendant with UUWF in violation of section 24-1.1(a) of the Criminal Code of 1961 (720 ILCS 5/24-1.1(a) (West 2010)), for possessing a knife after having been convicted of residential burglary, a forcible felony (720 ILCS 5/2-8 (West 2010)). As charged, defendant's prior felony burglary conviction was an element of the UUWF offense, a Class 2 felony, which subjected him to a term of 3-14 years' imprisonment under section 24-1.1(e) of the Criminal Code of 1961. 720 ILCS 5/24-1.1(e) (West 2010). As in *Easley*, the State was not seeking an enhanced sentence, but rather, the imposition of the *only* sentence statutorily permissible for this Class 2 offense. *Easley*, 2014 IL 115581 at ¶ 22. We thus find no error in the sentence imposed (*Easley*, 2014 IL 115581 at ¶ 26), and reject defendant's argument to the contrary.

¶ 11 In reaching this conclusion, we distinguish the instant case from *People v. Griham*, 399 Ill. App. 3d 1169 (2010), in which the State chose to use defendant's prior conviction under the

Controlled Substances Act to prove an element of UUWF, and then used the same conviction to enhance defendant's sentence as a Class X offender. *Id.* at 1172-1173. Here, by contrast, defendant's prior felony conviction was charged as an element of UUWF, a Class 2 offense, defendant was sentenced as a Class 2 offender, and there was no double enhancement.

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

¶ 13 Affirmed.