

No. 1-12-3501

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. 12 CR 9744
)	
DOMINIQUE BODDIE,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 **Held:** Defendant's convictions for AUUW based on possession of a firearm outside the home are vacated; defendant's convictions for AUUW based on possession of a firearm without a validly issued FOID card and conviction for possession of a controlled substance are affirmed; case remanded for entry of judgment and resentencing.
- ¶ 2 Defendant, Dominique Boddie, was charged by indictment with one count of armed violence, six counts of aggravated unlawful use of a weapon (AUUW), and one count of possession of a controlled substance. Following a bench trial, defendant was found not guilty of armed violence and guilty of the remaining counts. The trial court merged those convictions, and sentenced defendant to a single term of three years' imprisonment. On appeal, defendant's

sole contention is that the AUUW statute under which he was convicted, is unconstitutional. Defendant requests that this court reverse all of his AUUW convictions.

¶ 3 At trial, Chicago police officer Andy Ceja testified that on April 27, 2012,¹ he was working as a tactical patrol officer in plain clothes with his partner Officer Jose Duran. At approximately 1:15 p.m., the officers, in an unmarked police vehicle, were following a Nissan Maxima (Maxima) which was travelling northbound on Central Park Avenue. When the officers observed that the driver of the Maxima and his passenger were not wearing safety belts, Officer Duran activated the vehicle's emergency lights and sirens. When the Maxima came to a stop, the officers exited their vehicle and approached the Maxima. Defendant, who was a front-seat passenger in the vehicle, exited. Officer Ceja observed that defendant was holding a two-tone handgun by its muzzle. Officer Ceja announced his office, and defendant ran from the scene. Officer Ceja ordered defendant to stop, but defendant continued to run. Officer Ceja pursued defendant.

¶ 4 As defendant ran through a backyard, Officer Ceja observed him toss the handgun onto a rear porch located at 3548 East 13th Place. During the pursuit, Officer Ceja also observed defendant discard a plastic bag. The chase continued until defendant was cornered near a building. Officer Ceja detained defendant until other officers arrived on the scene. The police recovered the handgun which defendant had tossed onto the porch and the plastic bag which he discarded. Defendant was subsequently placed under arrest.

¶ 5 At trial, the parties stipulated that the handgun was a 9 millimeter semiautomatic pistol with three bullets in the magazine, and that defendant did not possess a valid Firearm Owner

¹ The transcript of Officer Cejas' testimony incorrectly indicates that the date of the incident was April 29, 2012. The indictment and the arrest report reflect that the proper date is April 27, 2012. Accordingly, we refer to that date in this order.

Identification Card (FOID card). It was further stipulated that forensic evidence would show the plastic bag, which defendant had discarded, contained methyldone, otherwise known as Ecstasy.

¶ 6 The trial court found defendant not guilty of armed violence, but guilty of the remaining counts, all six AAUW counts, and the possession of a controlled substance count. The trial court merged the convictions, and entered a single judgment on count II—AUUW under section 5/24-1.6 of the Criminal Code of 2012 (AAUW statute). 720 ILCS 5/24-1.6(a)(1) (West 2012). Defendant's motion for postjudgment relief was denied and the court sentenced him to three years' imprisonment on the merged convictions to run consecutively with the 13-year sentence he received for a prior armed-robbery conviction in case number 11 CR 5721.

¶ 7 On appeal, defendant does not seek to overturn his conviction for possession of a controlled substance. Defendant's sole contention is that his six convictions on the AUUW charges should be reversed because the AAUW statute, as a whole, is unconstitutional in light of our supreme court's recent decision in *People v. Aguilar*, 2013 IL 112116.

¶ 8 Under the AAUW statute, a person commits the offense of aggravated unlawful use of a weapon when he or she knowingly commits either of two enumerated acts: carries a weapon on his or her person, or in his or her vehicle outside the home, or carries a weapon on his or her person on the public way, in combination with one of nine listed conditions in subsection 3. *People v. Akins*, 2014 IL App (1st) 093418-B, ¶ 8. The factors in section 3, which are relevant to the charges here are the firearm was uncased, loaded and immediately accessible, and the person possessing the firearm had not been issued a valid FOID card. Specifically, three of defendant's convictions (counts II, III and VII) were based on the firearm being "uncased, loaded and immediately accessible at the time of the offense," which violated section 24-1.6(a)(3)(A). The other three convictions on counts IV, V, and VII were based on defendant not having been issued

a currently valid FOID card in violation of section 24-1.6(a)(3)(c).

¶ 9 In *Aguilar*, our supreme court found that, on its face, the Class 4 form of AUUW, as set forth in section 24-1.6(a)(1), (a)(3)(A), (d) of the AAUW statute which makes it illegal to possess an uncased, loaded firearm outside one's home, violated the right to bear arms as guaranteed by the second amendment of the United States Constitution. *Id.* ¶ 22. The court found these provisions were unconstitutional as they categorically prohibited the possession and use of a firearm outside of the home. *Id.* As a result, our supreme court reversed Mr. Aguilar's conviction for AAUW. *Id.* Based on that decision, the State concedes, and we agree that defendant's convictions as to counts II, III and VII should be vacated. See *Akins*, 2014 IL App (1st) 093418-B, ¶ 11 (the reasoning in *Aguilar* also extends to a conviction for possession on the public way).

¶ 10 The State contends, however, that defendant's remaining AUUW convictions as to counts IV, V, and VIII under sections 5/24-1.6(a)(1), (a)(2), (a)(3)(C) of the Code, for not having a currently valid FOID card, are valid. In response, defendant argues that the FOID card provisions of the AAUW statute are unconstitutional as they are inextricably bound to the subsections found unconstitutional in *Aguilar* and cannot be severed, and that the FOID card requirements are facially unconstitutional as an unreasonable burden is placed upon persons under the age of 21.

¶ 11 Defendant acknowledges that this court expressly rejected both of his arguments in *People v. Henderson*, 2013 IL App (1st) 113294. We held, in *Henderson*, that "subsections (a)(1), (a)(2), and the remaining factors in subsection (a)(3) can stand independently of subsection (a)(3)(A), which is only one of several factors that operate in conjunction with subsection (a)(1) or (a)(2) to comprise the substantive offense." *Id.* ¶ 22. "Because the removal

of one factor (subsection (a)(3)(A)) by application of *Aguilar* undermines neither the completeness nor the executability of the remaining subsections [it is not] so intertwined with the rest of the statute that the legislature intended the statute to stand or fall as a whole." *Id.* (Internal quotation marks omitted.) We also found that the FOID provisions of the AAUW statute were not facially unconstitutional, and rejected the defendant's claim that the FOID card requirements place an unreasonable burden on persons under the age of 21. *Id.* ¶ 33. *Accord Akins*, 2014 IL App (1st) 093418-B, ¶ 14; *People v. Taylor*, 2013 IL App (1st) 110166, ¶ 32.

¶ 12 Although defendant argues *Henderson* was wrongly decided, he offers no new argument, good cause, or compelling reason to depart from *Henderson*, and we will not do so. *Akins*, 2014 IL App (1st) 093418-B, ¶ 13. Accordingly, we find defendant's AAUW convictions for counts IV, V, and VII, which are based on a failure to possess a valid FOID card, are not unconstitutional under *Aguilar* and, thus, these convictions will not be reversed.

¶ 13 For the reasons stated, we vacate defendant's convictions for AUUW in counts II, III, and VII; affirm defendant's convictions for AUUW in counts IV, V, VIII; affirm his conviction for possession of a controlled substance in count VI; and remand the case to the trial court for entry of judgment and resentencing on those counts.

¶ 14 Affirmed in part; vacated in part; remanded for resentencing.