

No. 1-14-2206

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. 13 CR 17474
)	
TERESA ROBERTS,)	Honorable
)	Jorge Luis Alonso,
Defendant-Appellant.)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 **Held:** The exclusive jurisdiction provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-120 (West 2012)), did not deprive defendant of her constitutional rights. Defendant’s fines and fees order must be corrected to vacate an improperly assessed fine.

¶ 2 Following a jury trial, defendant Teresa Roberts was found guilty of aggravated unlawful use of a weapon and sentenced to two years of probation. Although defendant was 17 years old at the time of the offense, she was tried and sentenced as an adult in accordance with the exclusive jurisdiction provision in effect at that time, section 5-120 of the Juvenile Court Act of

1987 (Act) (705 ILCS 405/5-120 (West 2012)). On appeal, defendant contends that this provision, which exempted her from juvenile court proceedings due to her age, deprived her of her constitutional right to due process, and violates the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. She also challenges the assessment of a fine. We affirm, and correct the fines and fees order.

¶ 3 In brief summary, the evidence at trial established that on August 14, 2013, Chicago police officers McDonnell and Roberts were on patrol when Roberts observed an SUV traveling the wrong way down a one-way street. McDonnell curbed the SUV, and then approached the driver's side of the vehicle. Defendant was in the driver's seat. McDonnell requested defendant's license and proof of insurance. When defendant was unable to provide a driver's license, McDonnell requested that she step out of the car in order to take her into custody. As defendant stepped out of the car, it began to roll. Roberts entered the car through the passenger side to put the vehicle in neutral. Roberts then told McDonnell to take defendant into custody because he saw a weapon in the car.

¶ 4 The State admitted a certification from the Illinois State Police stating that as of November 3, 2013, no Firearm Owner's Identification Card had been issued to anyone with defendant's name and date of birth.

¶ 5 Defendant, who was 17 years old, testified in her own defense that the day before her arrest she was in the SUV with her uncle Curtis Roberts and his friend Izet Curtis. Her uncle was driving her to her boyfriend's house. Once she was dropped off, she realized that she left her purse in the SUV. The next morning, she borrowed the vehicle from Curtis, who owned it. She then drove around to see friends. When she was on her way to drop the car off, the "sign" switched and she drove the wrong way down a one-way street. Defendant was then pulled over

by the police. Defendant denied putting the gun in her purse, did not know that the gun was there, and denied that it was her gun.

¶ 6 The State presented the testimony of Officer Roberts in rebuttal. Roberts testified that he used the code words “143 Adam” to tell McDonnell that he had found a gun. Defendant then said “something to the effect of, the gun found ain’t mine.” Later, at a police station, Roberts gave defendant *Miranda* warnings. Defendant then stated that she knew that the gun was there and that her mother had been shot the prior day.

¶ 7 The jury found defendant guilty of two counts of aggravated unlawful use of a weapon. At sentencing, the trial court merged the counts and sentenced defendant to two years of probation.

¶ 8 On appeal, defendant first contends that the version of the Act’s exclusive jurisdiction provision in effect at the time of the offense, which provided that 17-year-olds were to be prosecuted as adults, deprived her of due process and violated the eighth amendment to the United States Constitution and the proportionate penalties clause of the Illinois Constitution.

¶ 9 The version of the exclusive jurisdiction provision in effect at the time of the offense stated that, subject to certain exceptions, Illinois’s juvenile court jurisdiction only applied to minors under 17 years old. 705 ILCS 405/5-120 (West 2012). Because defendant was 17 years old at the time of the offense, she was not subject to juvenile proceedings.

¶ 10 In reviewing the exclusive jurisdiction provision, we keep in mind that “[a]ll statutes carry a strong presumption of constitutionality.” *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The party challenging a statute has the burden to demonstrate that it is invalid. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). “Whether a statute is constitutional is a question of law that we review *de novo*.” *Id.*

¶ 11 Defendant argues that the exclusive jurisdiction provision at issue is constitutionally invalid after the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012), because the provision did not provide any opportunity for a trial court to consider her age, its attendant characteristics, or the circumstances of the offense. According to defendant, Illinois' statutory scheme is cruel and unusual because it mandates adult prosecution and sentencing for all 17-year-olds based on a predetermination that those juveniles do not share the inherent characteristics of youth that the Supreme Court has repeatedly said render them less culpable than adult offenders. In further support of her argument, defendant notes that the Act was amended "less than four months after this offense" to apply to minors under 18 years old.

¶ 12 In *Roper*, the Supreme Court held that imposing the death penalty on juvenile offenders under 18 years old violates the eighth amendment. *Roper*, 543 U.S. at 568. In reaching this conclusion, the Court discussed key differences between juveniles under 18 years old and adults, including a lack of maturity and an underdeveloped sense of responsibility, more vulnerability to negative influences and outside pressures, and a character that is not as well formed as that of an adult. *Id.* at 569-70. In *Graham*, the Court held that the eighth amendment forbids a sentence of life without parole for juvenile offenders who commit nonhomicide offenses because a sentence of life without parole "improperly denies the juvenile offender a chance to demonstrate growth and maturity." *Graham* 560 U.S. at 73-75. In *Miller*, the Court held that the eighth amendment forbids a sentencing scheme that mandates life in prison without parole for juveniles who commit homicide because such sentencing schemes "by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." *Miller*, 132 S. Ct. at 2467, 2469.

¶ 13 Although *Roper*, *Graham*, and *Miller* limited the range of penalties for juvenile offenders, defendant's challenge to the exclusive jurisdiction provision of the Act fails in light of, *inter alia*, our supreme court's decision in *People v. Patterson*, 2014 IL 115102.

¶ 14 In *Patterson*, the defendant contended that the mandatory transfer provision of the Act (705 ILCS 405/5-130 (West 2008)), which automatically transferred certain minors from the jurisdiction of the juvenile court to the adult criminal court, was constitutionally invalid. The court rejected the defendant's reliance on *Roper*, *Graham*, and *Miller* to support his procedural and substantive due process claims. *Id.* ¶ 97. The court concluded that "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id.* The court further found that because the automatic transfer statute was not a sentencing statute, the defendant's eighth amendment and proportionate penalties challenges "cannot stand." *Id.* ¶¶ 104-106. The court finally explained that access to juvenile courts was not a constitutional right because the Illinois juvenile court system was a "creature of legislation." *Id.* ¶ 104. See also *People v. Fiveash*, 2015 IL 117669, ¶ 21 (adjudication in juvenile court is not a matter of a constitutional right).

¶ 15 The same reasoning utilized in rejecting constitutional challenges to the automatic transfer provision of the Act is equally applicable to the exclusive jurisdiction provision challenged by defendant in this case. We find *People v. Harmon*, 2013 IL App (2d) 120439, instructive.

¶ 16 In that case, the court rejected the same arguments defendant raises here. The court noted that *Roper*, *Graham*, *Miller* and *J.D.B. v. North Carolina*, 564 U.S. 261 (2011), stand for the proposition that a sentencing body must have the chance to take into account mitigating circumstances before sentencing a juvenile to the harshest possible penalty, which was either the

death penalty or life imprisonment without the possibility of parole. *Id.* ¶ 54. The court further stated that the trial court in that case was able to consider the defendant's age, as well as other circumstances, at sentencing. *Id.* The court also found that while the eighth amendment prohibits cruel and unusual punishments, the exclusive jurisdiction provision of the Act did not impose punishment; rather, it specified the forum in which a defendant's guilt would be adjudicated. *Id.* ¶¶ 55-56. Therefore, the provision was not subject to, and did not violate, the eighth amendment or the proportionate penalties clause. *Id.* The court also rejected the defendant's due process arguments as the trial court was able to consider the defendant's youth and its attendant circumstances at sentencing. *Id.* ¶¶ 58, 62; see also *Fiveash*, 2015 IL 117669, ¶ 45, citing *Patterson*, 2014 IL 115102, ¶¶ 97-98 (noting that neither it nor the United States Supreme Court had ever held that the failure to address the inherent differences between juvenile and adult offenders created a due process violation when the juvenile was potentially subject to a prison sentence involving a term of years rather than the death penalty or natural life in prison).

¶ 17 For the same reasons, we find no due process violation here, especially because the trial court was able to consider defendant's youth and its attendant characteristics at sentencing. See *Harmon*, 2013 IL App (2d) 120439, ¶ 62. Similarly, we conclude that the exclusive jurisdiction provision of the Act does not violate the eighth amendment or the proportional penalties clause. *Id.* ¶¶ 55-56. See also *People v. Cavazos*, 2015 IL App (2d) 120444, ¶ 85 (noting the consistent rejection of defendants' efforts in this state to compare the statutes at issue in *Roper*, *Graham* and *Miller* to provisions of the Act).

¶ 18 Defendant next contests the imposition of the \$100 trauma fund fine. Although defendant has forfeited review of this claim because she did not challenge the fines and fees order in a postsentencing motion (see, e.g., *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), on

appeal a reviewing court may modify the fines and fees order without remanding the case back to the circuit court. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 19 Here, defendant contends, and the State concedes, that the \$100 trauma fund fine assessed against her should be vacated because this fine only applies to specified firearm offenses that do not include aggravated unlawful use of a weapon. See 730 ILCS 5/5-9-1.10 (West 2012). We therefore vacate the \$100 trauma fund fine.

¶ 20 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's fines and fees order to reflect the vacation of the \$100 trauma fund fine for a new total due of \$804. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 21 Affirmed; fines and fees order corrected.