2013 IL App (1st) 120314-U

FOURTH DIVISION
AUGUST 1, 2013

No. 1-12-0314

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. 09 CR 9979
	)	
ANDRE BELL,	)	Honorable
	)	Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

O R D E R

¶ 1 ***Held:*** Aggravated unlawful use of a weapon statute was not unconstitutional so that conviction thereunder is valid. Defendant was found guilty of multiple counts for possessing one firearm but was given a single sentence with no reference to multiple counts, so there are no redundant convictions to vacate.

¶ 2 Following a bench trial, defendant Andre Bell was convicted of aggravated unlawful use of a weapon (AUUW) and sentenced to two years' probation. On appeal, defendant contends that the AUUW statute, 720 ILCS 5/24-1.6 (West 2010), infringes on his constitutional right to keep and bear arms. U.S. Const. amend. II. Alternatively, he contends that we should vacate two of

his three convictions for AUUW as redundant because all three convictions are based on the same physical act of possessing a firearm. For the reasons stated below, we affirm.

¶ 3 Defendant was charged with a controlled substance offense and six counts of AUUW. All six counts alleged that, on or about May 6, 2009, he knowingly possessed or carried a firearm when he was not on his own land or in his own abode or fixed place of business. The counts either alleged that he carried the firearm on or about his person or in a vehicle. The counts variously alleged that the firearm was uncased, loaded, and immediately accessible, that he had not been issued a valid firearm owner's identification card (FOID), and that he possessed the firearm on a specific public street.

¶ 4 At trial, the evidence was that, when police stopped defendant's vehicle for a traffic offense, three officers saw him put a gun into his waistband. Defendant fled on foot, and a pursuing officer testified that he saw defendant discard the gun and a "clear object." A gun and a bag containing cannabis and narcotics were later found in the same area. On this evidence, the court found defendant not guilty of the controlled substance charge, granted a directed finding on three counts of AUUW alleging that he did not have a valid FOID, and found him guilty of three counts of AUUW.

¶ 5 The pre-sentencing investigation – accepted by the parties without correction – showed that defendant has a prior felony conviction for a controlled substance offense, for which he received and satisfactorily completed two years' probation. However, the court noted that because of the satisfactory completion of "410 probation *** it would not even be a conviction." *See* 720 ILCS 570/410(f), (g) (West 2010)(satisfactory completion of first-offender probation for minor controlled substance offenses dismisses the case so that it "is not a conviction *** for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.") Following arguments in aggravation and mitigation, the court sentenced him to two years of

probation. The written orders imposing probation and assessing fines and fees refer to defendant's offense as "Agg. UUW" without further specificity. This appeal timely followed.

¶ 6 On appeal, defendant primarily contends that the AUUW statute infringes upon his constitutional right to keep and bear arms.

¶ 7 At the time of defendant's offense, the UUW statute prohibited a person from carrying or concealing on or about his person, or in any vehicle, a firearm except when on his land or in his abode, legal dwelling, or fixed place of business, or on the land or in the dwelling of another as an invitee. 720 ILCS 5/24-1(a)(4) (West 2010). Also at that time, the AUUW statute prohibited the same with any of various additional factors including that the firearm "was uncased, loaded and immediately accessible," that it "was uncased, unloaded and the ammunition for the weapon was immediately accessible," or the person has not been issued a valid FOID. 720 ILCS 5/24-1.6(a) (West 2010).

¶ 8 The United States Court of Appeals for the Seventh Circuit recently found the UUW and AUUW statutes unconstitutional. *Moore v. Madigan*, 702 F. 3d 933 (7th Cir. 2012). The United States Supreme Court has found that the Second Amendment creates a personal right, binding upon the States through the Fourteenth Amendment (U.S. Const., amend. XIV, § 1), "to keep and bear arms for lawful purposes, most notably for self-defense within the home." *McDonald v. City of Chicago*, 561 U.S. —, 130 S. Ct. 3020, 3044 (2010), citing *District of Columbia v. Heller*, 554 U.S. 570 (2008). The Seventh Circuit found in *Moore v. Madigan* that the "right to bear arms for self-defense *** is as important outside the home as inside," found that the UUW and AUUW statutes create a "uniquely sweeping ban," and remanded the case to the federal district court for declarations of unconstitutionality and injunctive relief. *Moore v. Madigan*, 702 F. 3d at 942. Notably, the Seventh Circuit stayed its mandate "to allow the Illinois legislature to craft a new gun law that will impose reasonable limitations, consistent with the public safety and

the Second Amendment as interpreted in this opinion, on the carrying of guns in public." *Id.* The General Assembly has since amended the UUW and AUUW statutes pursuant to *Moore v. Madigan*. Pub. Act 98-0063 (eff. July 9, 2013).

¶ 9 However, in *People v. Moore*, 2013 IL App (1st) 110793, ¶¶ 14-19, we recently noted that a decision of a federal court other than the Supreme Court is not binding on this court but merely persuasive, and found *Moore v. Madigan* unpersuasive in light of the weight of Illinois case law upholding the AUUW statute.

> "We find it important to note again that the Court in '*Heller* and *McDonald* specifically limited its rulings to interpreting the second amendment's protection of the right to possess a handgun in the home for self-defense purposes, not the right to possess handguns outside of the home.' [Citation.] Accordingly, we do not agree with the Seventh Circuit that the right to self-defense delineated in *Heller* and *McDonald* encompasses a right to carry a loaded, readily accessible firearm in public areas. Given the line of contrary precedent in Illinois courts on this issue, we see no reason to adopt the decision in *Moore* [*v. Madigan*]." *Id.*, ¶ 18, quoting *People v. Aguilar*, 408 Ill. App. 3d 136, 148 (2011), *appeal allowed*, No. 112116 (Ill. May 25, 2011).

We therefore affirmed convictions under the pre-amendment AUUW statute. *Id.*, ¶ 21.

¶ 10 For the reasons stated in our *Moore* opinion, we do not find the AUUW statute as it stood in 2009 to be unconstitutional and affirm defendant's conviction thereunder.

¶ 11 Defendant also contends that two of his three convictions for AUUW should be vacated as redundant because all three convictions are based on the same physical act of possessing a

firearm. The trial court clearly found defendant guilty of three counts of AUUW, on charges that did not allege separate acts and evidence that he possessed one firearm. Where a court makes multiple findings of guilt for a single act, it must sentence the defendant on only a single – that is, the most serious – count. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 18. The court here did so, sentencing defendant to a single sentence of probation (with fines and fees). None of the sentencing orders reflect multiple counts of conviction. Defendant cites *In re Samantha V.*, 234 Ill. 2d 359 (2009), for the proposition that redundant findings of guilt must be vacated even where one sentence is imposed. However, *Samantha V.* is a juvenile delinquency case rather than a criminal case. Moreover, our supreme court in *Samantha V.* corrected a written order finding the respondent guilty of multiple counts of aggravated battery while "declin[ing] respondent's invitation to order the trial court to correct all references in the record that indicate that respondent was found guilty of more than one offense" because the courts should not "alter a trial record to free it from traces of error." *Id.*, 234 Ill. 2d at 380. We find that the court's trial findings and the clerk's half-sheet notation fall under the latter and do not resemble the "Trial Order" corrected in *Samantha V.*

¶ 12 Accordingly, the judgment of the circuit court is affirmed.

¶ 13 Affirmed.