

= People v. Aguilar =

People v. Aguilar , 2 N.E.3d 321 (Ill . 2013) , was an Illinois Supreme Court case in which the Court held that the Aggravated Unlawful Use of a Weapon (AUUF) statute violated the right to keep and bear arms as guaranteed by the Second Amendment . The Court stated that this was because the statute amounted to a wholesale statutory ban on the exercise of a personal right that was specifically named in and guaranteed by the United States Constitution , as construed by the United States Supreme Court . A conviction for Unlawful Possession of a Firearm (UPF) was proper because the possession of handguns by minors was conduct that fell outside the scope of the Second Amendment 's protection .

In 2008 , Alberto Aguilar , then 17 , was arrested and charged with AUUF and UPF . After being convicted and sentenced to probation by the trial court , he appealed , arguing that both statutes were unconstitutional infringements of his Second Amendment rights . The Illinois Court of Appeals affirmed his conviction , and he appealed that ruling to the Illinois Supreme Court . While Aguilar 's appeal was pending , the Federal Seventh Circuit Court of Appeals had ruled that the AUUF statute was unconstitutional .

When the matter was decided by the Illinois Supreme Court , they agreed with the Seventh Circuit and declared the AUUF law unconstitutional , but upheld the constitutionality of the UPF law .

= = Background = =

= = = Legal background = = =

Illinois was the last state in the nation to allow concealed carry of a handgun . Prior to 2013 , Illinois prohibited the carry of a firearm in a loaded condition , other than at one 's own property . If the firearm was loaded and not in a locked case , or if it was otherwise available for immediate use , it was a felony offense called Aggravated Unlawful Use of a Weapon (AUUF) . Illinois courts had uniformly upheld the constitutionality of the statute prior to 2008 . The state also had a law called Unlawful Possession of a Firearm (UPF) , which prohibited anyone under the age of 18 from possessing a firearm . Additionally , the City of Chicago had enacted strict gun control laws prohibiting the possession of any handgun that had not been registered prior to 1982 , when the law took effect .

On June 26 , 2008 , exactly two weeks after Aguilar 's arrest , the U.S. Supreme Court decided District of Columbia v. Heller . In Heller , the Court ruled that a law of the District of Columbia which had the effect of banning handguns in the city violated the Second Amendment and was unconstitutional . The Court said that the fundamental right protected by the Second Amendment was the right to self @-@ defense ; however since the District of Columbia was a federal jurisdiction , it was not clear that this applied to the individual states .

= = = Factual background = = =

On June 12 , 2008 , Chicago Police Officer Thomas Harris was in a surveillance position in the Little Village neighborhood of Chicago and observed a group of male teenagers creating a disturbance and throwing bottles at cars . Harris observed one of the teenagers , later identified as Alberto Aguilar , holding the right side of his waist , and Harris notified other officers . The other officers made contact with the teens and Officer John Dolan saw Aguilar drop a gun onto the ground . Aguilar , then 17 , was arrested . The officers noted that the handgun had three rounds loaded in it and that the serial number was filed off .

= = = Lower courts = = =

===== Circuit Court =====

Aguilar was tried for AUUF and UPF at the Circuit Court for Cook County . The officers testified that Aguilar had the gun and had dropped it , while Aguilar claimed that he never had a gun , but was waiting for his mother to pick him up when officers came running into the back yard and tackled him . Aguilar 's testimony was corroborated by Romero Diaz , who stated that Aguilar did not have a gun . Judge Charles P. Burns determined that the officers were more credible and found Aguilar guilty on both counts , sentencing him to 24 months probation on the AUUF charge ; he did not pass sentence on the UPF charge .

===== Illinois Court of Appeals =====

Aguilar then appealed his conviction , arguing that the AUUF statute violated the Second Amendment and was unconstitutional . The Court of Appeals , evaluating Heller , found that Heller only protected the right to possess a handgun in the home . The court also evaluated McDonald and found that while it applied the Second Amendment to the states , it also only applied to handguns possessed in the home . The court , using an intermediate scrutiny test , determined that the Illinois statute was substantially related to an important governmental objective to protect the public from gun violence . The court affirmed the conviction .

===== Other relevant events =====

===== McDonald v. City of Chicago =====

In 2008 , shortly after the Heller decision , three lawsuits were filed in Illinois , challenging the constitutionality of handgun bans in Chicago and Oak Park . All three cases were consolidated and heard in the United States District Court for the Northern District of Illinois , and were dismissed based on earlier U.S. Supreme Court rulings that the Second Amendment did not apply to the states . The cases were appealed to the Seventh Circuit , which affirmed based on the same reasoning . The U.S. Supreme Court reversed that decision , holding that the Second Amendment was applicable to the states through the Fourteenth Amendment , and clarified that " self @-@ defense was ' the central component of the right itself . ' "

===== Moore v. Madigan =====

In 2011 , two federal lawsuits were filed in the Southern District of Illinois and the Central District of Illinois . In both cases , the plaintiffs claimed that AUUF statute violated the Second Amendment in that it did not allow any method for a citizen to bear arms outside the home . Mary Shepard argued that the statutes were facially unconstitutional , while Michael Moore argued that the statutes were unconstitutional as applied . In both cases , the judges granted the state 's motion to dismiss for failure to state a claim , holding that the Second Amendment only protected the right to possess arms in the home . Both Moore and Shepard appealed their cases to the Seventh Circuit , where the cases were consolidated .

The Seventh Circuit found that Illinois law did violate the Constitution in that there was no method for a person to carry a weapon for self @-@ defense outside of the home . The court stated that the district courts had read Heller and McDonald too narrowly ? that the right protected was self @-@ defense , and there was as great if not greater need outside the home . The court rejected the state 's argument that strict gun regulation lowered crime , noting that the evidence did not support that . The decisions of the district courts were reversed and the cases remanded to those courts with instructions to declare the Illinois law unconstitutional , issuing a permanent injunction against the law 's enforcement . The court then stayed the order for 180 days to give the Illinois legislature an opportunity to amend the law to make it constitutional .

== Legislative actions ==

In January 2013 the Illinois Legislature began to look at enacting legislation to address the Moore decision . Lt. Governor Sheila Simon formed a working group of thirteen Democrats and two Republicans to look into the issue . During hearings on the matter , debate centered on concealed carry permits , with gun rights groups preferring shall @-@ issue permits while gun control groups favored may @-@ issue permits . On May 31 , 2013 , the state house passed a shall @-@ issue bill by a vote of 89 ? 28 , after state senate passed it by a vote of 45 ? 12 . Both had veto @-@ proof margins . On July 9 , 2013 , the Illinois legislature overrode Governor Pat Quinn 's veto , and concealed carry was authorized for the state once the Illinois State Police issued permits .

= Supreme Court of Illinois =

== Arguments ==

On appeal , Aguilar again argued that the AUUF statute was unconstitutional on its face . Aguilar also made the argument that the UPF statute was unconstitutional , since at the time the Second Amendment was adopted , 16- and 17 @-@ year @-@ olds could lawfully bear arms .

The state argued that Aguilar lacked standing to contest the constitutionality of the statute . The state claimed that since Aguilar denied having committing the act that the statute prohibited , he could not contest the constitutionality of it .

== Opinion of the court ==

Justice Robert R. Thomas delivered the opinion of a unanimous court . Thomas first disposed of the standing argument by the state , noting that Aguilar was not challenging the statute as applied , but was arguing that the statute was facially unconstitutional since it did not provide for any person to legally bear arms . Since anyone could challenge the constitutionality of a statute when they were charged with violating it , even without admitting the underlying conduct , the state 's argument was without merit .

Thomas then evaluated the constitutionality of the AUUF statute , noting that the Heller court had " concluded that the second amendment ' guarantee [s] the individual right to possess and carry weapons in case of confrontation ' " He noted that McDonald reiterated that self @-@ defense was at the core of the right . He analyzed what other courts in Illinois had done , noting that they had all focused on the ruling in Heller that the right existed in the home , and that they had held the AUUF statute constitutional since it affected conduct outside of the home . Thomas then compared this to the ruling by the Seventh Circuit in Moore and concluded that their ruling was correct , that the AUUF statute did in fact infringe on the rights guaranteed by the Second Amendment . Since the statute was unconstitutional , Aguilar 's conviction must be reversed .

Thomas rejected the argument on the unconstitutionality of the UPF statute , noting that all courts that had addressed this issue had found that persons under 21 could be barred from possessing firearms . The conviction for UPF was affirmed , and the case was remanded .

= Subsequent developments =

Following the decision , Cook County prosecutors stated that they would drop charges against some of the pending cases for AUUF , but that only those with valid Illinois Firearms Owner Identification cards would have the charges dropped . By September 16 , 2013 , the first case had been dismissed in Cook County . A number of law enforcement agencies , such as the Springfield Police and the Sangamon Sheriff 's Office , made a plea to the public to not immediately begin to carry concealed handguns . Some prosecutors have already announced that they do not intend to

prosecute these cases .