No. 127201

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the Second Judicial Circuit, White County, Illinois
Plaintiff-Appellant,	)	
v.	)	No. 17 CM 60
VIVIAN BROWN,	)	The Honorable Mark R. Stanley,
Defendant-Appellee.	)	Judge Presiding.

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLANT PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

E-FILED
1/11/2022 8:24 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

Background

In March 2017, White County Sheriff's Department personnel arrested and charged defendant with possession of a firearm in her home without a Firearm Owner's Identification (FOID) card, in violation of 430 ILCS 65/2(a)(1). C11. According to defendant, she was eligible for a FOID card at the time of her arrest. C166.

Defendant moved to dismiss the charges, arguing that "the entire [FOID card application] process suppresses a fundamental right that is recognized to be enjoyed in the most private of areas, . . . the home." C23. The circuit court granted defendant's motion and declared 430 ILCS 65/2(a)(1) unconstitutional under the Second Amendment to the United States Constitution and Article I, section 22 of the Illinois Constitution,[1] "as applied to this case only." C28-30. The court held that requiring defendant "to fill out a form, provide a picture ID and pay a $10 fee to obtain a FOID card" was an unconstitutional burden on her constitutional rights when she possessed the firearm in her own home for the purpose of self-defense. *Id.*

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[1] The circuit court's more recent order — the order under review in this appeal — relied solely on the federal constitution's Second Amendment.

In denying the People's subsequent motion to reconsider, C36-44, the circuit court added a new justification — one that defendant never raised — for its finding of unconstitutionality: that compliance with the FOID Card Act is impossible when in one's own home. C70. The court held that "430 ILCS 65/2(a)(1) is unconstitutional, as applied to this defendant, because it is impossible to comply in the person's own home." *Id.*

The People appealed directly to this Court, which vacated the circuit court's judgment upon concluding that the circuit court's ruling that "section 2(a)(1) of the FOID Card Act is unconstitutional as applied was not necessary to its resolution of this case." *People v. Brown* ("*Brown I*"), 2020 IL 124100, ¶ 36. As this Court explained, the circuit court's holding "that the FOID Card Act did not apply to the act of possessing a firearm in the home as a matter of statutory interpretation and, therefore, could not apply to defendant" was "an alternative, nonconstitutional basis for dismissing defendant's information." *Id.* at ¶ 31. Accordingly, this Court ordered "that the October 16, 2018, judgment order dismissing defendant's information be vacated and then modified to exclude the ruling that section 2(a)(1) is unconstitutional. The modified order is thereupon to be reentered." *Id.* at ¶ 36.

Justice Karmeier, joined by Justice Theis, dissented. Justice Karmeier disagreed with the majority's conclusion that "the lower court had advanced

an additional, nonconstitutional basis for its judgment," or that, even if it had, such a basis precluded this Court's review. *Id.* at ¶ 42 (Karmeier, J., dissenting). He reasoned that the majority "resolves this appeal based on an issue no one has raised . . . and remands the case to the circuit court for entry of an order that is clearly meritless and serves no purpose. Neither the parties nor the interests of justice will be served by this unexpected and pointless exercise." *Id.* at ¶ 39. He further noted, "That a Rule 18 problem should now prove fatal to the appeal is as surprising to me as I am sure it will be to the parties when they read the majority's opinion." *Id.* at ¶ 51. Justice Karmeier was particularly concerned that the alleged statutory basis for resolving defendant's claim was plainly meritless and had not been raised by the parties:

> It is not surprising that no one made such a claim. The language of the law is clear and unambiguous. There is no exception, here or in any other provision of the Act, for possession of the firearm, stun gun, or taser within one's home. To read the law as inapplicable to possession within the home, thereby avoiding any challenge to the constitutionality of the law as applied in that circumstance, would therefore require the court to depart from the plain language and meaning of the statute and read into it an exception, limitation, or condition the legislature did not express. That is something courts are not at liberty to do. *In re Hernandez*, 2020 IL 124661, ¶ 18.

Id. at ¶ 54.

On remand, the circuit court entered a modified order dismissing defendant's information "on [its] statutory analysis of impossibility of compliance." C114. On June 15, 2020, defendant filed a motion to reconsider, arguing that the "trial court's Modified Order herein is legally erroneous, and forces the defendant to take a position not of her own choosing, one that she will lose on appeal and one which will unnecessarily delay (perhaps by years) the ultimate disposition of this case." C142-46. The circuit court agreed, vacated the modified order, and reinstated the information. C161-65.

On June 19, 2020, defendant filed a new motion alleging that the FOID Card Act is unconstitutional, the People responded, and the circuit court again declared 430 ILCS 65/2(a)(1) and 430 ILCS 65/5 unconstitutional as applied to defendant. C218.

The People timely appealed directly to this Court. C219. On October 14, 2021, the People filed their appellant's brief in this appeal, and on November 18, 2021, defendant filed her appellee's brief. The People's reply brief is due on or before January 14, 2022.

On December 21, 2021, this Court ordered supplemental briefing on the following questions:

> 1) whether the circuit court's order vacating its June 4, 2020, modified order, reinstating the information filed by the State on May 5, 2017, and allowing defendant to present a motion to declare the FOID Card Act unconstitutional exceeds the scope of this Court's mandate in *People v. Brown*, 2020 IL 124100; and
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> 2) whether the circuit court could entertain defendant's motion to vacate the June 4, 2020, modified order.

I. The Circuit Court Did Not Exceed the Scope of this Court's Mandate.

This Court ordered the circuit court to vacate its October 16, 2018, judgment and issue a modified order that excluded its prior holding that section 2(a)(1) of the FOID Card Act is unconstitutional. *Brown I*, 2020 IL 124100, ¶ 36. The circuit court complied with this mandate when it issued an order that dismissed defendant's information "on [its] statutory analysis of impossibility of compliance." C114.

To be sure, the circuit court subsequently reconsidered this modified order and reinstated the information against defendant. C161-65. Typically, the circuit court would be precluded from reconsidering the merits of its order following this Court's mandate. "'When a judgment is reversed by a court of review, the judgment of that court is final upon all questions decided.'" *Price v. Philip Morris, Inc.*, 2015 IL 117687, ¶ 49 (quoting *PSL Realty Co. v.*

Granite Investment Co., 86 Ill. 2d 291, 305 (1981)). On remand, the reviewing court's judgment is considered the end of the case with respect to the merits, "and there is 'nothing which the circuit court [is] authorized to do but enter the decree.'" *Id.* (quoting *Smith v. Dugger*, 318 Ill. 215, 217 (1925)). In other words, "[a] decree entered by a trial court in accordance with the mandate of this court must be regarded as free from error." *Dugger*, 318 Ill. at 217.

But here, after vacating "the court's finding of unconstitutionality and remand[ing] the cause to the circuit court to enter a modified judgment order that excludes that finding," *Brown I*, 2020 IL 124100, ¶ 32, this Court's opinion immediately thereafter "emphasize[d] that we express no opinion on the merits of the circuit court's statutory analysis," *id.* Indeed, the Court explained, "The entry of a modified judgment order is done only to preserve the State's right to seek review in the appellate court of the circuit court's nonconstitutional basis for dismissing defendant's information and to 'permit the normal appellate process to run its course.'" *Id.* (quoting *Trent v. Winningham*, 172 Ill. 2d 420, 426 (1996)). Accordingly, while the Court's opinion expressly contemplated appellate review of the circuit court's decision, as opposed to reconsideration by the circuit court, it is plain that this Court did not consider the case final with respect to the merits of the statutory question. The Court did not regard the judgment issued in

accordance with its mandate as free from error, but rather invited reconsideration of the question, and it follows that the circuit court was authorized to reconsider its order, just as an appellate court would have been free to review it.

II. The Circuit Court Was Free To Entertain Defendant's Motion To Reconsider.

Similarly, defendant had standing to file her motion to reconsider the June 4, 2020, modified order. It is true that "as a general rule, a party cannot complain of error which does not prejudicially affect it." *Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 36. Here, even though the modified order dismissed the information against defendant, that order prejudicially affected her. As she noted in her motion, the "trial court's Modified Order herein is legally erroneous, and forces the defendant to take a position not of her own choosing, one that she will lose on appeal and one which will unnecessarily delay (perhaps by years) the ultimate disposition of this case." C142-46.

It is indisputable that the modified order is legally incorrect. As Justice Karmeier noted, the statute's language "is clear and unambiguous" and contains "no exception, here or in any other provision of the Act, for possession of the firearm, stun gun, or taser within one's home." *Brown I*, 2020 IL 124100, ¶ 54 (Karmeier, J. dissenting). A contrary construction "would therefore require the court to depart from the plain language and

meaning of the statute and read into it an exception, limitation, or condition the legislature did not express," which "courts are not at liberty to do." *Id.* (citing *In re Hernandez*, 2020 IL 124661, ¶ 18).

Neither party has ever argued to the contrary. So, as defendant explained, had she been forced to stand by this plainly erroneous order while the People appealed it (an action explicitly authorized by *Brown I)*, it would have done nothing other than delay, possibly by years, a final disposition of the criminal charges against her.

While "it is fundamental that the forum of courts of appeal should not be afforded to successful parties who may not agree with the reasons, conclusion or findings below," *Illinois Bell Tel. Co. v. Illinois Commerce Comm'n,* 414 Ill. 275, 282-83 (1953), nor should a defendant be bound to a plainly erroneous decision on an issue that the parties never raised and that will inevitably be overturned on appeal, extending for months or years the resolution of the defendant's criminal charges.

This position comports with the stated purpose of this Court's standing doctrine. The "purpose of the standing doctrine is to ensure that courts are deciding actual, specific controversies and are not deciding abstract questions or moot issues." *Dean Foods Co.*, 2012 IL 111714, ¶ 36. If the People and defendant were forced to litigate the plainly erroneous modified order on

appeal, the parties and courts would have spent months or even years deciding an issue about which there was no actual controversy. Meanwhile, the actual, specific controversy presented in this case would remain in limbo. "The gravamen of standing is a real interest in the outcome of the controversy, and standing is shown by demonstrating some injury to a legally cognizable interest." *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 23. Neither party had a real interest in the position adopted in the modified order, but the existence of that order imposed an actual injury on defendant's legal interests.

Defendant's interest in the finality of these proceedings, *see, e.g.*, *People v. Inman*, 2014 IL App (5th) 120097, ¶ 37 (citing *People v. Levin*, 157 Ill. 2d 138, 161 (1993)), would have been prejudiced by the plainly erroneous modified order dismissing the complaint. The parties agreed that the order was legally incorrect and would have been subject to reversal on appeal, requiring reinstatement of the charges and forcing defendant to again face criminal proceedings, possibly years down the line. Because the modified order prejudicially affected defendant, she had standing to challenge it in a motion to reconsider.

CONCLUSION

For these reasons, defendant had authority to seek reconsideration of, and the circuit court had authority to vacate, the June 4, 2020, modified order.

January 11, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 10 pages.

/s/ Garson S. Fischer
GARSON S. FISCHER
Assistant Attorney General

CERTIFICATE OF FILING AND SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. The undersigned certifies that on January 11, 2022, the foregoing **Supplemental Brief of Plaintiff-Appellant** was electronically filed with the Clerk, Illinois Supreme Court, through the Odyssey eFileIL system, which will serve the following, counsel for defendant:

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