

No. 1-09-3359

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. 09 CR 9436
)	
SHON PERKINS,)	Honorable
)	John A. Wasilewski,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice ROCHFORD concurred in the judgment.

ORDER

HELD: Armed habitual criminal conviction affirmed over second amendment challenge to its constitutionality.

¶ 1 Following a bench trial, defendant Shon Perkins was found guilty of violating the armed habitual criminal statute (720 ILCS 5/24-1.7(a) (West 2008)) and sentenced to seven years' imprisonment. On appeal, defendant does not challenge the sufficiency of the evidence showing that he dropped a loaded handgun while running from the police and that he had prior felony

convictions. He contends, rather, that his conviction should be reversed because the armed habitual criminal statute violates his second amendment right to bear arms for self-defense in that it criminalizes the mere possession of firearms by certain felons. He thus requests this court to declare the statute facially unconstitutional and as applied to him.

¶ 2 Defendant acknowledges that he did not raise this issue in the trial court; however, a challenge to the constitutionality of a criminal statute may be raised at any time and is subject to *de novo* review. *People v. Coleman*, No. 1-09-0417, slip op. at 12-13 (April 29, 2011). We observe that the intermediate scrutiny standard has been adopted as the proper standard to be applied to second amendment challenges. *People v. Ross*, 407 Ill. App. 3d 931, 939 (2011). That said, we begin our analysis with the presumption that the statute is constitutional, and "the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." (Internal quotation marks omitted.) *Coleman*, No. 1-09-0417, slip op. at 13, *quoting People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 3 Defendant's challenge to the armed habitual criminal statute stems from the recent decisions of the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, _ U.S. _, 130 S. Ct. 3020 (2010). In *Heller*, 554 U.S. at 628, 635, the Supreme Court held that the second amendment protects the right to possess a handgun in the home for self-defense and struck down a District of Columbia ordinance that completely banned handgun possession in the home and required that any lawful firearm in the home always be disassembled or bound by a trigger lock. In *McDonald*, _ U.S. at _, 130 S. Ct. at 3050, the Supreme Court held that the due process clause of the fourteenth amendment incorporated the second amendment right recognized in *Heller*.

¶ 4 Based on these decisions, defendant maintains that his mere possession of a handgun is conduct protected at the very core of the second amendment, conduct that the amendment

"elevates above all other interests." *Heller*, 554 U.S. at 635. Accordingly, he posits, the armed habitual criminal statute, which criminalizes the possession of firearms by a twice-convicted felon, such as himself, is an unconstitutional infringement on his right to bear arms for self-defense.

¶ 5 This court has previously considered and rejected similar constitutional challenges to the armed habitual criminal statute based on *Heller* and *McDonald*. In *Ross*, 407 Ill. App. 3d at 942, this court concluded that "the armed habitual criminal statute is a constitutionally permissible restriction of the right to bear arms, as a valid exercise of government's right to protect the health, safety, and general welfare of its citizens. The restriction serves a substantial governmental interest and is proportional to the interest served." In *Coleman*, No. 1-09-0417, slip op. at 14-15, this court found its analysis in *Ross* to be well reasoned and adopted the conclusion therein upholding the constitutionality of the armed habitual criminal statute.

¶ 6 Upon examination, we find that the same conclusion obtains here. The Supreme Court has never suggested that a felon can possess a firearm inside or outside a home; and the majority in *Heller* stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Ross*, 407 Ill. App. 3d at 939, quoting *Heller*, 554 U.S. at 626-27.

¶ 7 Defendant acknowledges that *McDonald* repeats that *dicta*, but argues that it is inapplicable here and should not be followed. We are unpersuaded by his reasoning that the Supreme Court's failure to identify any statutes like the one in this case makes the *dicta* in *Heller* inapplicable, and observe that judicial *dicta* should usually carry dispositive weight in an inferior court. *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). We therefore find that defendant's

facial challenge to the armed habitual criminal statute fails. *Coleman*, No. 1-09-0417, slip op. at 15.

¶ 8 We are also unpersuaded by defendant's reliance on *De Jonge v. Oregon*, 299 U.S. 353 (1937), as support for his claim that he "was convicted and sentenced, not for abusing an enumerated right, but simply for exercising that right." He asserts that the evidence only showed that he carried a handgun and that the State cannot criminalize otherwise lawful conduct protected at the core of an "enumerated right," *i.e.*, to keep and bear arms.

¶ 9 *De Jonge* involved a defendant who was charged and convicted of assisting in a Communist Party meeting, violating the fundamental right to peaceable assembly. *De Jonge*, 299 U.S. at 362. The Supreme Court held that the right of peaceable assembly is cognate to those of free speech and free press and the Oregon criminal syndicalism statute was unconstitutional as applied to defendant, who was entitled to take part in a peaceable assembly having a lawful purpose, without incitement to violence or crime. *De Jonge*, 299 U.S. at 364-65.

¶ 10 The Supreme Court, however, has not recognized a fundamental right to carry firearms for self-defense extending outside one's home or to felons. Thus, we find *De Jonge* distinguishable from the case at bar; and, as a result, defendant's claim that the armed habitual criminal statute is unconstitutional, as applied to him, fails.

¶ 11 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 12 Affirmed.