

No. 1-10-3018

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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellee,	)	of Cook County.
	)	
v.	)	No. 09 CR 19277
	)	
MICHAEL HILL,	)	Honorable
	)	John Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

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PRESIDING JUSTICE QUINN delivered the judgment of the court.  
Justices Cunningham and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant's challenge to his conviction because he disagrees with the trial court's credibility findings is without merit because the police testimony was not so improbable or unsatisfactory that no rational trier of fact could believe it. Additionally, the Armed Habitual Criminal Act, 720 ILCS 5/24-1.7 (West 2005) does not violate the state and federal constitutional prohibition against *ex post facto* laws even if the State uses convictions that occurred prior to enactment as an element of the offense.

¶ 2 The defendant appeals his conviction for unlawful use of a weapon by a felon and for being an armed habitual criminal by challenging the credibility of one of the arresting officers and arguing

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that the Armed Habitual Criminal Act, 720 ILCS 5/24-1.7 (West 2005), is unconstitutional because violates the *ex post facto* principles where it permits consideration of some of his prior criminal convictions which occurred prior to the effective date of the Act.

¶ 3

### BACKGROUND

¶ 4 Two uniformed police officers were on their routine evening patrol in their marked squad car when they spotted defendant emerge from the gangway of an abandoned building while holding the waistband of his pants in a suspicious manner. The two officers decided to perform a field interview. They stopped their squad car in the street and exited. The defendant looked in the direction of the police, turned around and fled on foot back through the gangway. Both officers pursued him. Officer Rodriguez was in front and observed the defendant drop a shiny revolver which he clearly saw with available light. He stopped to retrieve the gun and called for back-up while Officer Vasquez continued the pursuit and apprehended the defendant. The defendant was arrested and mirandized. Officer Rodriguez then asked defendant why he had a gun. Defendant replied; "For protection."

¶ 5 A one-day bench trial was held. The two officers testified consistently with their police reports. The State also entered into evidence, without objection, proof of defendant's prior convictions for murder in 1998 and drug trafficking in 1997. The defendant took the stand in his defense and testified that: 1) he was only given a portion of his Miranda warnings before answering any questions; 2) he did not have a gun on him that night; and 3) he ran from police because he needed to dispose of a plastic bag of marijuana in his possession which he ate while running from police. The trial judge found the police officers' testimony regarding the defendant's possession of a gun to be credible and found defendant guilty. Defendant was sentenced to seven years in prison.

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¶ 6 I. DEFENDANT'S CLAIM THAT THE STATE DID NOT PROVE ITS CASE

¶ 7 Defendant argues that there was insufficient proof for any finding of guilt beyond a reasonable doubt because Officer Rodriguez's testimony was incredible, despite the trial court's holding to the contrary. Defendant argues that his version of events should be believed.

¶ 8 This court reviews a defendant's claim as to the sufficiency of the evidence in a criminal trial in a light most favorable to the prosecution. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). In other words, "[t]he reviewing court must allow all reasonable inferences from the record in favor of the prosecution." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). This court must decide whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Wheeler*, 226 Ill. 2d at 114. This court's function, as a reviewing court, is not to retry the defendant, (*People v. Rodriguez*, 408 Ill. App. 3d 782, 792 (2011) citing *People v. Evans*, 209 Ill. 2d 194, 209 (2004)), but to determine whether the guilty finding is so unreasonable or improbable that it justifies a finding of reasonable doubt of defendant's guilt and, therefore, reversal of the verdict. *People v. Wheeler*, 226 Ill. 2d at 115.

¶ 9 The trial court was faced with two competing versions of events: Officer Rodriguez's testimony that he saw the defendant drop a gun and retrieved the gun where he saw it dropped *versus* the defendant's denial that he had a gun. Officer Rodriguez's version of events is not "so improbable and unsatisfactory that no rational trier of fact could believe it." *People v. Robinson*, 252 Ill. App. 3d 1023, 1035-36 (1993). The testimony of only one witness is sufficient to convict even when the defendant provides a contradictory version of events. *People v. Rodriguez*, 408 Ill. App. 3d 782, 794 (2011). This court gives great deference to the trial court's ruling. We find that the record supports

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the trial court's guilty finding and affirm the defendant's conviction.

¶ 10           II. DEFENDANT'S CLAIM THAT HIS CONVICTION VIOLATES THE  
                  CONSTITUTIONAL PROHIBITION AGAINST *EX POST FACTO* LAWS

¶ 11    The Armed Habitual Criminal Act (AHCA) became effective on August 5, 2005. 720 ILCS 5/24-1.7 (West 2005). Two of defendant's prior criminal convictions that served as elements of the offense of armed habitual criminal occurred before the effective date. Therefore, defendant argues, despite many cases to the contrary, that his conviction under the AHCA violated the *ex post facto* provisions of the Illinois and U.S. constitutions.

¶ 12    The constitutionality of any statute is a matter of law which is subject to *de novo* review on appeal. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). This court also has "a duty to construe a statute in a manner that upholds its validity and constitutionality" if it can reasonably be accomplished. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). A statute also carries with it a strong presumption of constitutionality. *People v. Sharpe*, 216 Ill. 2d at 487. The party challenging a statute has the burden of clearly establishing that the statute violates the constitution. *People v. Sharpe*, 216 Ill.2d at 487. It is against this backdrop that we would normally analyze defendant's constitutional challenge to the AHCA. However, we are guided by the wealth of prior decisions which have analyzed the identical arguments defendant presents in the instant case and have upheld the constitutionality of the AHCA and denied *ex post facto* arguments. See *People v. Bailey*, 396 Ill. App. 3d 459, 462 (2009); *People v. Leonard*, 391 Ill. App. 3d 926, 931 (2009); *People v. Tolentino*, 409 Ill. App. 3d 598 (2011); *People v. Davis*, 405 Ill. App. 3d 585 (2010); and *People v. Adams*, 404 Ill. App. 3d 405 (2010). Our court precedent establishes that recidivist-type laws that penalize repeat offenders simply do not implicate the constitutional prohibition against *ex post facto* laws.

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¶ 13 Defendant argues specifically that because he was convicted of his two offenses that qualified him for charges under the AHCA, prior to the effective date of the AHCA, his conviction under the AHCA is against *ex post facto* laws, citing *People v. Dunigan*, 155 Ill. 2d 235, 242 (1995). As this court has previously recognized, the AHCA does not violate the prohibition against *ex post facto* laws by allowing the use of convictions that occurred prior to the enactment of the AHCA as elements of the crime. *People v. Bailey*, 396 Ill. App. 3d at 462; *People v. Leonard*, 391 Ill. App. 3d at 931. Clearly, the defendant is not being punished for his old criminal acts. Those criminal convictions are merely being used as an element of the offense to support his conviction of a new criminal act of being a felon in possession of a gun. There are no new issues raised by the defendant that have not already been thoroughly and adequately addressed by this court in prior decisions.

¶ 14 We therefore find that the AHCA does not violate the *ex post facto* provisions of the Illinois and U.S. constitutions and affirm the defendant's convictions.

¶ 15 Affirmed.

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