

No. 1-11-1662

**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. 10 CR 11722
	)	
DARYL BENNETT,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE PALMER delivered the judgment of the court.  
Justices Howse and Taylor concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Statute criminalizing felon's possession of a weapon or ammunition in the home was not unconstitutional.
- ¶ 2 In a bench trial, defendant Daryl Bennett was convicted of unlawful possession of ammunition by a felon and sentenced to 24 months' probation. On appeal he contends that the statute under which he was convicted is unconstitutional on its face and as applied to him.
- ¶ 3 At trial the State's evidence established the following. On June 17, 2010, Chicago police officers executed a search warrant at a first-floor apartment located at 2949 East 80th Street. They found a box of shotgun shells in one room and two shotgun shells and a single .32-caliber bullet in another room. Defendant was present in the apartment and the officers found mail

addressed to him at that address. Defendant told the police that he had received the shotgun shells and a shotgun from his uncle when he was in Michigan and he had brought them back to the apartment. He subsequently turned in the gun to the city of Chicago and received a \$100 gift card. The parties stipulated that defendant had previously been convicted of a felony. Although the nature of this felony was not specified at trial, the record indicates that defendant had previously been convicted of unlawful possession of a controlled substance and was sentenced to two years' probation for that offense.

¶ 4 Based upon this evidence, defendant was convicted of unlawful possession of ammunition by a felon and sentenced to two years' probation. Defendant now contends that this statute is unconstitutional on its face and as applied to him. The statute at issue provides:

"(a) It is unlawful for a person to knowingly possess on or about his person or on his land or in his own abode or fixed place of business any \*\*\* firearm or any firearm ammunition if the person has been convicted of a felony\*\*\*." 720 ILCS 5/24-1.1(a) (West 2010).

¶ 5 The second amendment to the United States constitution provides:

"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend II.

Defendant relies primarily upon two decisions of the Supreme Court that interpreted this provision as guaranteeing the right of an individual to possess a handgun in his home for purposes of self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 598-99 (2008); *McDonald v. City of Chicago*, 561 U.S. \_\_\_, \_\_\_, 130 S.Ct. 3020, 3037-38, 3050 (2010) (applying the right to bear arms to the states under the fourteenth amendment).

¶ 6 In two recent cases we have rejected the same contention made by defendant here. *People v. Robinson*, 2011 IL App (1st) 100078, ¶¶ 26-28; *People v. Spencer*, 2012 IL App (1st)

102094, ¶ 31. In these cases we found that the intermediate level of scrutiny should be applied to the challenged statute concerning unlawful use of a weapon (UUW). *Robinson*, 2011 IL App (1st) 100078, ¶ 18; *Spencer*, 2012 IL App (1st) 102094, ¶ 26. We noted that both *Heller*, 554 U.S. at 571, and *McDonald*, 561 U.S. at \_\_\_\_, 130 S.Ct. at 3047, included *dicta* indicating that their holdings were not intended to apply to laws prohibiting felons from possessing firearms. *Robinson*, 2011 IL App (1st) 100078, ¶ 25; *Spencer*, 2012 IL App (1st) 102094, ¶ 30. We then found that under the intermediate level of scrutiny, the UUW statute was reasonably related to an important governmental objective, protecting the welfare and safety of the public, and therefore found the statute constitutional on its face. *Robinson*, 2011 IL App (1st) 100078, ¶ 26; *Spencer*, 2012 IL App (1st) 102094, ¶ 31. We are persuaded by the reasoning of these two cases and, accordingly, we also find that the statute challenged here is constitutional on its face.

¶ 7 Defendant also challenges the constitutionality of the statute as applied to him, arguing, *inter alia*, that the statute interferes with his right to defend himself in his home. Because defendant failed to challenge this statute in the trial court, we have no facts in evidence concerning whether defendant ever contemplated self-defense as a reason for keeping the shotgun shells which he told police he had obtained from an uncle. The absence of such a factual record is the basis for the rule that an as-applied constitutional challenge will not be considered on appeal unless there has been a prior evidentiary hearing related to the facts underlying that challenge. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 228 (2010); *In re the Parentage of John M.*, 212 Ill. 2d 253, 268 (2004); *Spencer*, 2012 IL App (1st) 102094, ¶ 32. Accordingly, we find no basis for upholding defendant's as-applied challenge to the statute.

¶ 8 For the reasons set forth in this order, we affirm defendant's conviction and sentence.

¶ 9 Affirmed.