

2012 IL App (2d) 111071-U
No. 2-11-1071
Order filed August 22, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Du Page County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-CM-2703
)	
MARCELA SALINAS,)	Honorable
)	Jane Hird Mitton,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The retail-theft statute is constitutional. Therefore, we affirmed defendant's conviction.

¶ 1 Defendant, Marcela Salinas, pleaded guilty to retail theft (720 ILCS 5/16A-3(a) (West 2010)). She moved to withdraw the plea, contending that the retail-theft statute is unconstitutional. The trial court denied the motion, and defendant appeals. She contends that the statute creating the offense of retail theft is unconstitutional because it (1) violates the single-subject clause of the Illinois Constitution (Ill. Const. 1970, art. IV, § 8(d)); (2) violates separation-of-powers principles

(Ill. Const. 1970, art. II, § 1); and (3) constitutes special legislation (Ill. Const. 1970, art. IV, § 13).

We affirm.

¶ 2 A complaint charged defendant with taking clothing worth less than \$300 from a Kohl's department store in the Stratford Square Mall. Defendant pleaded guilty and was sentenced to one year's conditional discharge.

¶ 3 Defendant moved to withdraw the plea, arguing that the retail-theft statute (for unspecified reasons) denied her due process and amounted to special legislation. She also contended that the sentence was excessive and that the court considered a prior arrest not resulting in a conviction. The trial court denied the motion and defendant timely appealed.

¶ 4 Defendant first contends that the statute violates the single-subject clause because it provides for both civil and criminal remedies for retail theft. See 720 ILCS 5/16A-3, 16A-7 (West 2010). Although defendant did not raise this precise contention below, the State does not argue that she forfeited the issue. See *People v. Bryant*, 128 Ill. 2d 448, 454 (1989) (constitutional challenge to statute may be raised at any time). Although the issue is not forfeited, we find it without merit.

¶ 5 As defendant acknowledges, legislative acts enjoy a strong presumption of constitutionality and the party challenging the constitutionality of a statute bears the burden of rebutting this presumption and clearly establishing a constitutional violation. *People v. Sypien*, 198 Ill. 2d 334, 338 (2001). The constitutionality of a statute is a question of law that we review *de novo*. *People v. Einoder*, 209 Ill. 2d 443, 450 (2004).

¶ 6 We agree with the State that defendant appears to misunderstand the nature of a single-subject challenge. The single-subject clause regulates the process by which legislation is enacted. *People v. Reedy*, 186 Ill. 2d 1, 8 (1999). The rule prohibits the legislature from lumping together in

one bill diverse provisions, no one of which could succeed on its own merits. *Fuehrmeyer v. City of Chicago*, 57 Ill. 2d 193, 201-02 (1974). The word “subject” in this context may be as broad as the legislature chooses; however, matters included in an enactment must have a natural and logical connection. *Johnson v. Edgar*, 176 Ill. 2d 499, 515 (1997). Defendant does not discuss at all how the retail-theft statute was passed, but merely compares various provisions in the codified statute. Thus, she has not established that any legislative enactment comprising the retail-theft statute was passed in violation of the single-subject provision. In any event, we have no difficulty perceiving a “natural and logical connection” between provisions imposing civil and criminal liability for retail theft. *Id.*

¶ 7 Defendant further complains that the civil portion of the statute provides for liability for actual damages, as well as “an amount not less than \$100 nor more than \$1,000.” 720 ILCS 5/16A-7(a)(ii) (West 2010). The significance of this argument is not apparent to us. That the statute provides for something akin to punitive damages for retail theft has nothing to do with whether the various provisions of the retail-theft statute relate to a single subject. Defendant’s argument appears to be more in the nature of a double-jeopardy argument but, as the State points out, defendant is not presently subject to the civil-liability provision and, thus, lacks standing to challenge it. See *People v. Greco*, 204 Ill. 2d 400, 409 (2003) (“to have standing to challenge the constitutionality of a statute, a person must have suffered or be in immediate danger of suffering a direct injury as a result of enforcement of the challenged statute.”).

¶ 8 Defendant next contends that the retail-theft statute violates separation-of-powers principles. The Illinois constitution provides, “The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.” Ill. Const. 1970, art. II, § 1. Defendant

argues that section 16A-10 of the retail-theft statute violates this provision. That section elevates retail theft to a Class 4 felony if the person has a previous conviction of certain types of offenses. 720 ILCS 5/16A-10(2). The statute further provides:

“When a person has any such prior conviction, the information or indictment charging that person shall state such prior conviction so as to give notice of the State’s intention to treat the charge of retail theft as a felony. The fact of such prior conviction is not an element of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial.” 720 ILCS 5/16A-10(2) (West 2010).

Defendant maintains that in this section the legislature “is directing both the executive branch and the judicial branch how to perform their assigned functions.”

¶ 9 Like the State, we do not really understand this argument, and defendant’s brief does not enlighten us much. Other than the conclusional statement quoted above, defendant does not explain how this provision represents a legislative usurpation of judicial or executive power. It is well established that the legislature has the power to enact laws governing judicial practices, as long as it does not unduly infringe upon the courts’ powers. *People v. Warren*, 173 Ill. 2d 348, 367 (1996). Defendant does not explain how section 16-10 unduly infringes upon the courts’ powers. It appears to be little different from countless provisions regulating procedures in the courts. Defendant cites no cases and offers no reasoned argument showing that this provision constitutes an undue infringement on executive or judicial prerogatives. See *Velocity Investments, LLC v. Alston*, 397 Ill. App. 3d 296, 297 (2010) (appellate court is not a repository into which an appellant may dump the burden of argument and research).

¶ 10 Defendant finally contends that the retail-theft statute constitutes special legislation, giving special protection to retailers but not to other theft victims such as manufacturers or wholesalers. As the State points out, this argument has been specifically rejected. See *People v. McNeal*, 120 Ill. App. 3d 625, 628-29 (1983); *People v. Fix*, 44 Ill. App. 3d 607, 610 (1976). In *Fix*, the court explained its holding as follows:

“It requires only a cursory consideration of the nature of a retail establishment to conclude that the manner in which such business displays its merchandise, sells the same to customers and deals with its customers justifies the conclusion that these characteristics distinguish the business from that of a wholesaler, banker, manufacturer or some other type of business establishment.” *Fix*, 44 Ill. App. 3d at 610.

We agree with this reasoning and conclude once again that the statute does not violate special-legislation principles.

¶ 11 The judgment of the circuit court of Du Page County is affirmed.

¶ 12 Affirmed.