

No. 1-14-0209

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. 11 CR 4614
)	
PYREESE WALLACE,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Delort concurred in the judgment.

ORDER

¶ 1 *Held:* We affirmed defendant's conviction of being an armed habitual criminal, finding that the armed habitual criminal statute was not facially unconstitutional.

¶ 2 Following a bench trial, the trial court convicted defendant, Pyreese Wallace, of being an armed habitual criminal and sentenced him to 7½ years in prison. On appeal, defendant contends the armed habitual criminal statute is facially unconstitutional as it violates due process by criminalizing innocent conduct. We affirm.

¶ 3 On March 12, 2011, someone opened fire inside a crowded nightclub located at the intersection of 74th and Halsted Streets, wounding two persons. Defendant was arrested outside

the club and later charged with two counts of attempted murder, two counts of aggravated battery with a firearm, and one count of being an armed habitual criminal.

¶ 4 At defendant's bench trial, the trial court acquitted him of the attempted murder and aggravated battery with a firearm charges, finding there was insufficient evidence he fired the gun. The court concluded, though, that there was sufficient evidence that defendant had been in possession of a gun. Based on defendant's prior convictions of robbery and unlawful use of a weapon by a felon, the trial court convicted defendant of being an armed habitual criminal and sentenced him to 7 ½ years' imprisonment. Defendant appeals.

¶ 5 Defendant's only argument on appeal is that the armed habitual criminal statute violates due process and is facially unconstitutional because it makes possession of a firearm a crime regardless of whether or not the person has a Firearm Owners Identification (FOID) card, which "potentially criminalizes innocent conduct."

¶ 6 All statutes are presumed constitutional, and the party challenging the constitutionality of a statute bears the burden of clearly establishing that it violates the constitution. *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). "When the challenged statute does not affect a fundamental constitutional right, the appropriate test for determining its constitutionality is the highly deferential rational basis test." *Id.* at 466. Under that test, a statute will be sustained if it "bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective." *People v. Wright*, 194 Ill. 2d 1, 24 (2000) (quoting *People v. Adams*, 144 Ill. 2d 381, 390 (1991)). Whether a statute is unconstitutional is a question of law reviewed *de novo*. *Madrigal*, 241 Ill. 2d at 466.

¶ 7 "Under the banner of its police power, the legislature has wide discretion to fashion penalties for criminal offenses, but this discretion is limited by the constitutional guarantee of

substantive due process, which provides that a person may not be deprived of liberty without due process of law." *Id.* A statute violates the due process clause if it potentially subjects "wholly innocent conduct to criminal penalty without requiring a culpable mental state beyond mere knowledge." *Id.* at 467. In such cases, "a statute fails the rational basis test because it does not represent a reasonable method of preventing the targeted conduct." *Id.* at 468.

¶ 8 Here, defendant's challenge is a facial challenge to the armed habitual criminal statute on due process grounds, not an "as applied" challenge. "Successfully making a facial challenge to a statute's constitutionality is extremely difficult, requiring a showing that the statute would be invalid under *any* imaginable set of circumstances. The invalidity of the statute in one particular set of circumstances is insufficient to prove its facial invalidity." (Emphasis in original.) *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006). "[S]o long as there exists a situation in which a statute could be validly applied, a facial challenge must fail." *People v. Huddleston*, 212 Ill. 2d 107, 145 (2004) (quoting *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002)).

¶ 9 In pertinent part, the armed habitual criminal statute provides that a person commits the offense of being an armed habitual criminal if he possesses any firearm after having been convicted two or more times of certain specified offenses, including the underlying offenses (robbery and unlawful use of a weapon by a felon) here. See 720 ILCS 5/24-1.7(a) (West 2010).

¶ 10 Defendant argues that certain persons who have twice been convicted of the crimes set forth in the armed habitual criminal statute may lawfully be awarded a FOID card and possess a firearm. Defendant cites section 10(c) of the Firearm Owners Identification Card Act (FOID Card Act) (430 ILCS 65/10(c) (West 2010)), in effect at the time of his conviction, which provided that persons with prior felony convictions may, upon application, be awarded a FOID card where: (1) the applicant has not been convicted of a forcible felony within 20 years of his

application for a FOID card, or at least 20 years have passed since the end of any period of imprisonment imposed in relation to that conviction; (2) the circumstances regarding a criminal conviction, the applicant's criminal history, and his reputation are such that he will not likely act in a manner dangerous to public safety; and (3) granting relief would not be contrary to the public interest. Defendant contends the armed habitual criminal statute fails the rational basis test and facially violates the due process clause because it potentially criminalizes innocent conduct without requiring a culpable mental state, specifically, it criminalizes the possession of firearms by felons who were issued a FOID card by the circuit court after the court determined they met the criteria of the FOID Card Act.

¶ 11 This same argument as to the facial unconstitutionality of the armed habitual criminal statute for violating due process was made and rejected in *People v. Johnson*, 2015 IL App (1st) 133663. The *Johnson* court held:

"While it may be true that an individual could be twice-convicted of the offenses set forth in the armed habitual criminal statute and still receive a FOID card under certain unlikely circumstances, the invalidity of a statute in one particular set of circumstances is insufficient to prove that a statute is facially unconstitutional. See *M.T.*, 221 Ill. 2d at 536-37. The armed habitual criminal statute was enacted to help protect the public from the threat of violence that arises when repeat offenders possess firearms. *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). The Supreme Court explicitly noted in *District of Columbia v. Heller*, 554 U.S. 570 (2008), that 'nothing in our opinion [explaining the reach of the right to bear arms] should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.' *Id.* See *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993) (judicial *dicta* should usually carry dispositive weight in an inferior court).

Accordingly, we find that the potential invalidity of the armed habitual criminal statute in one very unlikely set of circumstances does not render the statute unconstitutional on its face." *Johnson*, 2015 IL App (1st) 133663, ¶ 27.

¶ 12 We adhere to *Johnson* and reject defendant's contention that the armed habitual criminal statute is facially unconstitutional for violating the due process clause.

¶ 13 Defendant cites *Coram v. State of Illinois*, 2013 IL 113867, which discusses the FOID Card Act but does not address the constitutionality of the armed habitual criminal statute and, thus, is factually inapposite. In finding that the armed habitual criminal statute was not facially unconstitutional, the *Johnson* court briefly considered *Coram* but also found that it was factually inapposite and did not compel a different result. See *Johnson*, 2015 IL App (1st) 133663 ¶¶ 28-29.

¶ 14 Even though *Coram* is factually inapposite, defendant cites certain statements in *Coram* that the Illinois constitution guarantees every citizen the right to individualized consideration of whether they may legally own a firearm, and that section 10(c) of the FOID Card Act authorizing the issuance of FOID cards to persons meeting the statutory criteria was consistent with federal law. See *Coram*, 2013 IL 113867, ¶¶ 58, 74. Defendant posits from these statements that Illinois law only intends for the act of possession of a firearm by a person twice convicted of offenses set forth in the armed habitual criminal statute to be a crime if it is also shown that the person did not have a FOID card at the time of the possession; defendant contends that since the armed habitual criminal statute potentially criminalizes the possession of firearms by a twice-convicted felon with a valid FOID card, that statute sweeps in innocent conduct and facially violates the due process clause.

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¶ 15 As discussed earlier in this order, though, the potential invalidity of the armed habitual criminal statute under the one "very unlikely" circumstance that a twice-convicted felon received a FOID card does not render the statute unconstitutional *on its face*. *Johnson*, 2015 IL App (1st) 133663, ¶ 27.

¶ 16 For the foregoing reasons, we affirm the circuit court.

¶ 17 Affirmed.