2015 IL App (1st) 140253-U

FIRST DIVISION
December 21, 2015

No. 1-14-0253

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. 13 CR 10236
	)	
JAMES JORDAN,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Liu and Justice Connors concurred in the judgment.

O R D E R

¶ 1 *Held*: Where defendant was not subjected to impermissible double enhancement, his conviction for being an armed habitual criminal is affirmed.

¶ 2 Following a bench trial, defendant James Jordan was convicted of being an armed habitual criminal, unlawful use or possession of a weapon by a felon, aggravated unlawful use of a weapon, and felony driving while his driver's license was suspended or revoked. The trial court merged all of the convictions into the armed habitual criminal offense and sentenced defendant to the minimum term of six years' imprisonment. On appeal, defendant solely contends that his

conviction should be reduced to unlawful use or possession of a weapon by a felon because the trial court subjected him to an impermissible double enhancement.

¶ 3 Defendant was charged with one count of being an armed habitual criminal, one count of unlawful use or possession of a weapon by a felon, six counts of aggravated unlawful use of a weapon, and four counts of felony driving while his driver's license was suspended or revoked. Defendant moved to quash his arrest and suppress evidence consisting of a gun and the oral statement he made to police.

¶ 4 At a hearing on that motion, Delano Jones, defendant's friend of 20 years, testified that about 9 p.m. on May 18, 2013, he was sitting inside his parked car in front of defendant's house, waiting to drive defendant to the train station to pick up his girlfriend. Defendant exited his house and got into the driver's seat of his own car, which was parked across the street from Jones' car. Defendant never turned on or moved his car. About three seconds later, police arrived and stopped their unmarked vehicle in front of defendant's car. One officer exited the vehicle, removed Jones from his car, and after searching him, told him that he could leave. Jones then left his car parked in front of defendant's house and walked away. The other officer approached defendant and removed him from his car. That officer showed Jones a gun he had recovered, but Jones did not know where it was found. Jones acknowledged that he had a prior conviction for armed robbery. The parties stipulated that there were no arrest warrants for defendant on the date in question, and the defense rested.

¶ 5 Chicago police officer Cahill testified that about 9:30 p.m. on May 18, 2013, he and his partner, Officer Kemp, were on routine patrol around 5011 South Carpenter Street when he saw a gray Pontiac being driven away from the curb, and observed that the driver, defendant, was not wearing a seatbelt. Officer Cahill conducted a traffic stop and saw Jones walking away from the

passenger side of defendant's vehicle. As Officer Cahill approached the Pontiac, he saw defendant make furtive movements with his left hand towards the floorboard of the vehicle. When defendant could not provide his driver's license, the officer asked him to exit his vehicle. As defendant stepped out of his car, Officer Cahill saw a 9-millimeter handgun laying on the floorboard, directly to the left of the driver's seat. The officers arrested defendant, and later discovered that he did not have a valid driver's license. The trial court found that the traffic stop was legitimate, and denied defendant's motion to quash his arrest and suppress the evidence.

¶ 6 Immediately thereafter, the parties proceeded to trial and incorporated by reference the testimony from the motion hearing. At trial, Officer Cahill further testified that as he approached defendant's vehicle, he could not see defendant's left hand and repeatedly ordered him to show his hands. During this time, defendant's car was running, and Officer Cahill clearly saw him stuff something towards his lower left side. The officer testified that he recovered the gun from the floorboard of the driver's seat, where defendant had been sitting just moments before, no one else was present inside the vehicle, and the recovered weapon was uncased and loaded with 12 live rounds. Defendant subsequently waived his *Miranda* rights and told police that he had the gun to protect his family.

¶ 7 The State then presented certified copies of defendant's two prior felony convictions – one for manufacture or delivery of cocaine, and the other for unlawful use or possession of a weapon by a felon. The parties stipulated that defendant had not been issued a Firearm Owner's Identification Card, that his driving privileges were suspended pursuant to a statutory summary suspension for driving under the influence, and that this offense constituted his fourth violation for driving on a suspended or revoked license.

¶ 8 Defendant testified that he was arrested while sitting inside his fiancee's car, that he had entered the car to retrieve his Link card from the glove compartment, and as soon as he retrieved that card, the police arrived. Defendant claimed that he never put the keys into the ignition, he never tried to drive the car, and never put on the seatbelt. He further testified that he did not place a gun in the car that day, and that the car was regularly used by several family members. Defendant denied telling police that he had the gun to protect his family. He acknowledged, however, that he was sitting in the driver's seat and had the keys to the car, and that he saw police recover a gun from the car, but denied knowing who owned the gun.

¶ 9 The trial court found Officer Cahill's testimony "credible and compelling beyond a reasonable doubt," and found defendant guilty of all charges. The trial court merged all of the convictions into the armed habitual criminal offense and sentenced defendant to six years' imprisonment.

¶ 10 On appeal, defendant solely contends that his conviction for being an armed habitual criminal should be reduced to unlawful use or possession of a weapon by a felon because the trial court subjected him to an impermissible double enhancement. Defendant claims that the trial court improperly used his prior conviction for delivery of a controlled substance twice to prove both of the predicate felonies for the armed habitual criminal offense – once by itself, and again as an element of the second predicate felony of unlawful use of a weapon by a felon. This same argument was recently considered and rejected by this court in *People v. Johnson*, 2015 IL App (1st) 133663, and for the reasons that follow, we find no reason to depart from that decision in this case.

¶ 11 Double enhancement of a sentence is prohibited based on the presumption that the legislature considered the factors inherent in the offense when it designated the appropriate range

of punishment for that offense. *People v. Phelps*, 211 Ill. 2d 1, 12 (2004). Our supreme court has identified two situations in which double enhancement occurs: (1) where one factor is used as both an element of the offense, and as a basis for imposing a more severe sentence than would have otherwise been imposed; and (2) where the same factor is used twice to raise the severity of the offense. *People v. Guevara*, 216 Ill. 2d 533, 545 (2005). Double enhancement is not improper, however, where the legislature clearly expresses an intent to allow such enhancement. *Phelps*, 211 Ill. 2d at 15. To determine if the legislature intended to allow a double enhancement, courts consider the language of the statute, giving the words their plain and ordinary meaning. *Id*.

¶ 12 The armed habitual criminal statute provides, in relevant part:

> "(a) A person commits the offense of being an armed habitual criminal if he or she receives, sells, possesses, or transfers any firearm after having been convicted a total of 2 or more times of any combination of the following offense:
>
> (1) a forcible felony ***;
>
> (2) unlawful use of a weapon by a felon ***; or
>
> (3) any violation of the Illinois Controlled Substances Act or the Cannabis Control Act that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7 (West 2012).

¶ 13 Here, the trial court based defendant's armed habitual criminal conviction on defendant's two prior convictions: (1) manufacture or delivery of more than 1 but less than 15 grams of cocaine, a Class 1 felony under the Illinois Controlled Substances Act (720 ILCS 570/401(c)(2) (West 2012)); and (2) unlawful use of a weapon by a felon (UUWF) (720 ILCS 5/24-1.1 (West 2012)). Both of these offenses are enumerated above as valid offenses upon which an armed habitual criminal conviction may be based. The fact that the drug conviction was the felony upon

which defendant's UUWF conviction was based does not negate the validity of the two offenses as the predicate offenses for defendant's armed habitual criminal conviction. *Johnson*, 2015 IL App (1st) 133663, ¶ 16.

¶ 14 In *Johnson*, the defendant similarly argued that his conviction for being an armed habitual criminal should be reduced to UUWF because, *inter alia*, the trial court subjected him to an impermissible double enhancement by using his prior residential burglary conviction to prove both predicate felonies of the armed habitual criminal offense – once by itself, and again as an element of the second predicate felony of UUWF. *Johnson*, 2015 IL App (1st) 133663, ¶ 13. This court found that the residential burglary conviction was used only once, as a predicate felony for the armed habitual criminal conviction, and was not used again to enhance the defendant's sentence. *Johnson*, 2015 IL App (1st) 133663, ¶ 18. In making that finding, this court reasoned:

> "Finding that a UUWF conviction could not be predicated on the same conviction (here, residential burglary) as that used for one of the predicate offenses required for an armed habitual criminal conviction, would render the armed habitual criminal statute illogical. If defendant's construction of the armed habitual criminal statute were to be accepted, any defendant whose armed habitual criminal conviction consisted of the offense of UUWF would then have to have a third conviction—one that did not serve as a predicate offense to his UUWF conviction. Defendant's conclusion reads into the armed habitual criminal statute an element that is not there: that a court can only use the predicate felony of UUWF if the UUWF conviction is based on a felony other than the one used as the second predicate felony for the armed habitual criminal conviction. In other words, when using UUWF as a predicate felony for an armed habitual criminal conviction, the

> offender would have to have at least three prior felony convictions instead of two. There is no such language in the armed habitual criminal statute, and we refuse to read it into the statute. See *People v. Christopherson*, 231 Ill. 2d 449, 454 (2008) (a court presumes the legislature did not intend to create absurd results). Accordingly, we find that there was no improper double enhancement in this case."

¶ 15 We adhere to our reasoning in *Johnson*, and reach the same conclusion in this case. Defendant's two prior convictions, manufacture or delivery of a controlled substance and UUWF, are separately enumerated as predicate offenses that support an armed habitual criminal conviction. The fact that defendant's drug conviction was the underlying offense that supported his UUWF conviction bears no significance in determining whether he met the elements of the armed habitual criminal statute. To require a third prior conviction in defendant's case would add another element that is not dictated by the plain language of the statute, and would render the statute illogical. Accordingly, we find no double enhancement in this case.

¶ 16 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 17 Affirmed.