2016 IL App (1st) 132591-U

FIRST DIVISION
FEBRUARY 29, 2016

No. 1-13-2591

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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 20005
	)	
LEVAR JONES,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Liu and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction for firearm possession after the revocation of his Firearm Owner's Identification Card was not erroneous where: (1) the revocation was not invalidated by an alleged statutory conflict between the Firearm Owners Identification Card Act and the Illinois Domestic Violence Act of 1986; (2) the defendant's due process rights were not violated; and (3) the State's evidence was sufficient to support the conviction.

¶ 2 The defendant appeals from his conviction, following a bench trial, for violating the Firearm Owners Identification Card Act (FOID Card Act) by possessing firearms after his Firearm Owner's Identification Card (FOID Card) had been revoked. We conclude that his contentions lack merit and affirm his conviction.

¶ 3 BACKGROUND

¶ 4 On October 26, 2011, the defendant's seven-month-old child, Levar Jr., was shot by another of the defendant's children, Matari, with a gun that the defendant allegedly kept in his family's home. As a result, the defendant was charged with two counts of violating the FOID Card Act and three counts of reckless conduct.

¶ 5 Count 1 (the sole count at issue in this appeal) charged that he possessed a firearm without a valid FOID Card, as his FOID Card had been revoked. See 430 ILCS 65/(2)(a)(1), 14(c)(1) (West 2012). That revocation was premised on the entry of a prior order of protection against the defendant. See 430 ILCS 65/8.2 (West 2012). Count 2 similarly charged that he possessed firearms without a valid FOID Card and when he "was not otherwise eligible" under the FOID Card Act. See 430 ILCS 65/(2)(a)(1), 14(c)(3) (West 2012). The three reckless conduct counts charged that, by keeping firearms in his residence accessible to children, the defendant caused "great bodily harm," "permanent disability" and "permanent disfigurement."

¶ 6 A bench trial commenced on July 25, 2013. The State first called Jessica Malone, the defendant's ex-wife and the mother of both Matari and Levar Jr. At the time of the October 26, 2011 shooting incident, she and the defendant were married and living with their children.

¶ 7 On the evening of the shooting, Malone was at home with seven-year-old Matari, seven-month-old Levar Jr., two of her other children, and the defendant's mother, Loretha Jones (Loretha). The defendant was not at home at the time. Malone testified that she was braiding Loretha's hair in one bedroom, while Matari and Levar Jr. were in another bedroom. After hearing a "loud bang," she went into the other room, where she saw Matari "standing by the TV." Levar Jr., who was lying in bed, had been shot in the left knee. No one else was in the room at the time of the shooting.

¶ 8 Asked about her knowledge of guns in the home, Malone testified that she had seen a revolver in the home a "couple of times," including earlier in October 2011, when she saw the defendant holding it. She recalled that the gun was kept on a seven-foot tall shelf in the home but denied that she ever handled it. She recalled a conversation with the defendant in the summer of 2011, in which she told him that she "didn't agree with [the revolver] being in the house" and "asked him to get rid of it."

¶ 9 Malone testified that, prior to the incident an order of protection had been entered on behalf of Matari against the defendant. Malone testified to her belief that the order did not prohibit him from living in the same home as Matari. Shortly thereafter, Malone was excused and directed to return the next day to continue her testimony.

¶ 10 By stipulation of the parties, the court admitted a copy of the order of protection. The order reflects that it was entered on June 3, 2011, in a proceeding brought by an Assistant State's Attorney on behalf of Matari, and that the order was to remain in effect until June 1, 2012. The order of protection consists of a form, which indicates that it was prepared by the clerk of the circuit court of Cook County. The form contains several numbered checkboxes, corresponding to various potential restrictions on the respondent's conduct that the court may impose as conditions of the order. The checked boxes in the defendant's order of protection barred him from committing "physical abuse," "harassment," "intimidation," and "stalking" towards Matari. The order also included handwritten language prohibiting "unlawful contact" against Matari.

¶ 11 Of particular significance in this appeal, the form for the order of protection contains a checkbox numbered "14.5" accompanied by the language: "Respondent is ordered to surrender any and all Firearm(s) and Firearm Owner's Identification Card and to the local law enforcement

agency (i.e. police department)." However, that box was *not* checked in the June 2011 order of protection entered against the defendant.

¶ 12 On July 26, 2013, trial resumed with further testimony by Malone. She was shown a gun, and testified that it "could be" the same gun that was kept in her home. Malone stated that she had seen the defendant keep the gun in a holster, either "on his waist" or "in his pocket."

¶ 13 On cross-examination, Malone agreed that the revolver described in her earlier testimony had belonged to Loretha's deceased husband and that it now "belonged" to Loretha. She further testified that although she had seen the defendant on one occasion "with his cleaning kit and then I think he was taking it to the basement," she had not actually seen him clean the gun.

¶ 14 On redirect examination, Malone testified that after police arrived at her home on the evening of October 26, 2011, she saw that the police "had two guns on the floor" of the room where Levar Jr. had been shot. One of them resembled the revolver that had belonged to Loretha's deceased husband.

¶ 15 The State next called Loretha, the defendant's mother. She recalled that on the evening of the incident, she was with Malone while Levar Jr. was asleep in another bedroom. After hearing a gunshot, she ran to the other room and saw Levar Jr. lying on the bed, while "Matari was crotched [sic] down at the end of the bed." She testified that when Matari got up, she saw a gun that looked like her deceased husband's revolver.

¶ 16 Loretha denied telling the police that she had given the gun to the defendant after her husband passed away. She acknowledged that the defendant has a "gunsmith license" but denied ever seeing him with the revolver or telling police that he cleaned or maintained the gun.

¶ 17 The State next called detective Robert Garza, who testified that he had interviewed Levar Jr.'s family members following the shooting. Detective Garza testified that on the evening of the

incident, Loretha told police that the "weapon belonged to her deceased husband and that it was given to her son [the defendant] when he moved into the apartment." According to Detective Garza, Loretha also reported that the defendant would "practice" with the weapon at a gun shop, and that he "maintained the weapon and other weapons."

¶ 18 Detective Garza also testified that he spoke with the defendant on the evening of the incident, and that the defendant "mentioned that his FOID [C]ard was revoked." According to Detective Garza, the defendant stated that the revolver had belonged to his mother's husband and that he "kept it on top of a cabinet in the living room." Detective Garza also stated that the defendant informed police that he kept another firearm in the basement of his residence.

¶ 19 The State next called Alex Del Castillo, an Assistant State's Attorney with the Cook County State's Attorney's Office. Del Castillo testified that he interviewed the defendant at about 1:00 a.m. on October 27, 2011. According to Del Castillo, the defendant stated he was a gunsmith and indicated "that at one point he did have a valid FOID Card, but eventually, it was revoked due to an order of protection."

¶ 20 Del Castillo stated that the defendant admitted that in his home was a revolver "that was probably loaded that belonged to his mother." According to Del Castillo, the defendant stated that he had "maintained" the gun and "had taken [it] to the firing range before." The defendant stated that he usually kept the gun atop a cabinet but "acknowledged that, that evening he wasn't sure where he left it." According to Del Castillo, the defendant had also admitted that "he was probably negligent in leaving it around the house, where a child could get at it." On cross-examination, Del Castillo acknowledged that the defendant stated that his mother, Loretha, was the owner of the revolver.

¶ 21 Following Del Castillo, the State presented stipulated testimony of an attending physician at the University of Chicago Medical Center. That testimony stated that Levar Jr.'s gunshot wound caused a "fracture to the left distal femur as well as the patella" requiring surgery, and that he was discharged from the hospital on November 1, 2011.

¶ 22 The parties also stipulated to testimony that a revolver recovered from the defendant's residence was tested and found to have "one fired .38 special cartridge." Another revolver and a .22 caliber rifle were also recovered from the residence.

¶ 23 Without objection, the State also moved into evidence a certification from the Illinois State Police reflecting that a FOID Card was issued to the defendant in January 2008, and that on June 6, 2011, the FOID Card "was revoked due to [the defendant] having an order of protection."

¶ 24 After the State rested, the defendant moved for a directed verdict on all counts. The trial court granted the motion for directed verdict as to counts 4 and 5, for reckless conduct based on permanent disability or permanent disfigurement. The trial court denied the motion with respect to the FOID Card Act counts, after noting that section 8.2 of the FOID Card Act calls for the revocation of a FOID Card if the holder is "subject to an existing order of protection." 430 ILCS 65/8.2 (West 2012). The trial court additionally remarked that "somebody ought to reconstruct" the order of protection form containing the checkbox numbered 14.5 regarding the turnover of a respondent's FOID Card and firearms, "because th[at] box, as it applies at least to firearms, is irrelevant" in light of section 8.2 of the FOID Card Act.

¶ 25 The defendant rested after electing not to testify. In closing argument, the defendant's counsel argued that the State had failed to establish the defendant's possession of a firearm, arguing that the revolver "was [Loretha's] gun." The defendant's counsel further argued that

there was no proof that the defendant "knew his FOID [C]ard had been revoked," based on the lack of a checked box in the June 2011 order of protection:

> "[T]here is also a box, I believe it's 14.5 *** that says that the firearms and FOID [C]ard must be surrendered if that box is checked. That box was not checked. I understand the law is – that by operation of law once there is an order of protection entered that a FOID [C]ard is revoked, but [the defendant] would have had no notice of that. In fact, the notice would have been the exact opposite, the notice that the State provided to him."

¶ 26 On August 1, 2013, the court found the defendant guilty of the FOID Card Act violation in count 1 only, and found the defendant not guilty of the remaining counts. The defendant made an oral motion to reconsider the finding of guilt, arguing that the evidence showed that the defendant "never possessed any firearms." The court denied the motion, stating: "The evidence was clear that at the very least he took control of the firearm, if for no other reason to clean it, maintain it." The court subsequently sentenced the defendant to two years of probation. On the same date, the defendant filed a notice of appeal.

¶ 27 ANALYSIS

¶ 28 We note that we have jurisdiction as the defendant perfected a timely notice of appeal. See Ill. S. Ct. R. 606(a),(b) (eff. Feb. 6, 2013).

¶ 29 The defendant's appeal raises several distinct challenges to his conviction, claiming that: (1) his FOID Card was not "validly revoked" by his June 2011 order of protection due to a statutory conflict between provisions of the FOID Card Act and the Illinois Domestic Violence Act of 1986 (Domestic Violence Act); (2) that his due process rights were violated; and (3) that

the State did not prove the elements of his offense beyond a reasonable doubt. We find that the defendant's arguments lack merit.

¶ 30 First, we address the defendant's arguments based on the alleged conflict between provisions of the FOID Card Act and the Domestic Violence Act. Specifically, he claims that his conviction, premised on his FOID Card revocation, cannot stand in light of the Domestic Violence Act provision that (as of 2011) permitted a court entering an order of protection to require a respondent to surrender his FOID Card and firearms. Because the court entering the June 2011 order of protection did not mark the corresponding checkbox ordering such relief, he argues, his FOID Card was not "validly revoked."

¶ 31 We turn to the statutes at issue. First, we note the relevant FOID Card Act provisions. Section 2(a)(1) of the FOID Card Act provides that "[n]o person may acquire or possess any firearm ***without having in his or her possession a Firearm Owner's Identification Card previously issued in his or her name by the Department of State Police under the provisions of this Act." 430 ILCS 65/2(a)(1) (West 2012). Under section 14(c)(1), possession of a firearm in violation of section 2(a)(1) is a Class 3 felony when "the person's Firearm Owner's Identification Card is revoked or subject to revocation under Section 8." 430 ILCS 65/14(c)(1) (West 2012). In turn, section 8.2 of the FOID Card Act —the basis for the revocation of the defendant's FOID Card in this case—provides: "The Department of State Police shall deny an application or shall revoke and seize a Firearm Owner's Identification Card previously issued under this Act if the Department finds that the applicant or person to whom such card was issued is or was at the time of issuance subject to an existing order of protection." 430 ILCS 65/8.2 (West 2012).

¶ 32 The defendant argues that his conviction under the foregoing provisions cannot be sustained in light of a conflict with a provision of the Domestic Violence Act in effect when the

June 2011 order of protection was entered. Section 214 of the Domestic Violence Act sets forth the "remedies" that may be imposed in conjunction with entry of an order of protection, and subsection 14.5 describes the remedy of "Prohibition of firearm possession." The version of that provision in effect when the June 2011 order of protection was entered[1] stated:

> "When a complaint is made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner, the court shall examine on oath the petitioner, and any witnesses who may be produced. If the court is satisfied that there is any danger of the illegal use of firearms, and the respondent is present in court, it shall issue an order that any firearms and any Firearm Owner's Identification Card in the possession of the respondent *** be turned over to the local law enforcement agency for safekeeping. *** The period of safekeeping shall be for a stated period of time not to exceed 2 years. The firearm or firearms and Firearm Owner's Identification Card shall be returned to the respondent at the end of the stated

[1] Notably, the current version of the "Prohibition of firearm possession" provision of the Domestic Violence Act does not require the case to have been premised on the threatened use of firearms, or that the court specifically find a threat of illegal use of firearms. Rather, under the current version, the court entering an order of protection "shall" order the turnover of a FOID Card and seizure of the respondent's firearms if: (1) the respondent received notice and an opportunity to participate at the hearing; (2) the order "restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury"; and (3) the order "includes a finding that such person presents a credible threat to the physical safety of such intimate partner or child; or *** explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child." 750 ILCS 60/214(b)(14.5)(a) (West 2012).

> period or at expiration of the order of protection, whichever is sooner." 750 ILCS 60/214(b)(14.5)(a) (West 2010).

¶ 33 Thus, in cases where the order of protection was sought because the respondent had "threatened or [was] likely to use firearms" against the petitioner, the statutory language at the time allowed the trial court to force the respondent to surrender his FOID Card and firearms, if the court found "any danger of the illegal use of firearms." *Id.* It is apparent that section 214 (b)(14.5) was the basis for the checkbox numbered "14.5" on the circuit court form that was used for the June 2011 order of protection against the defendant.

¶ 34 The defendant's argument relies on the purported conflict between section 8.2 of the FOID Card Act, which *mandates* revocation upon an order of protection, and section 214(b)(14.5) of the Domestic Violence Act, which in 2011 merely *permitted* a court entering an order of protection to force a respondent to surrender his FOID Card and firearms. The defendant acknowledges the principle that "[w]here two statutes are allegedly in conflict, a court has a duty to interpret the statutes in a manner that avoids an inconsistency and gives effect to both statutes, where such an interpretation is reasonably possible." *Barragan v. Casco Design Corp.*, 216 Ill. 2d 435, 441-42 (2005). However, he insists that the "only way *** that these statutes exist in harmony is to read the revocation provision of Section 8.2 as permissive, not mandatory, and contingent on a judicial determination of dangerousness." He proceeds to argue that, because the judge entering the June 2011 order of protection did not check the box pursuant to section 214(b)(14.5) of the Domestic Violence Act requiring him to surrender his FOID Card and firearms, that judge "did not determine that [his] firearm ownership posed a threat to his son." As a result, he claims that the order of protection did *not* cause the revocation of his FOID

Card. In other words, he asserts that "since the judge at the [order of protection] hearing did not determine that [his] firearm ownership presented a danger, [his] FOID [C]ard was still valid."

¶ 35 We reject the defendant's position for a number of reasons. First, we decline to find the conflict that the defendant urges. Rather, since the statutes govern distinct issues— revocation and possession—they can be construed in a manner that does not undermine the mandatory nature of revocation of a FOID Card upon entry of an order of protection.

¶ 36 Where two statutes conflict, we will attempt to construe them together, *in pari materia*, where such an interpretation is reasonable." *Moore v. Green*, 219 Ill. 2d 470, 479 (2006). We review statutes "as a whole, construing words and phrases in light of other relevant statutory provisions and not in isolation. Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous." *People v. Gutman*, 2011 IL 110338, ¶ 12.

¶ 37 Our examination of the statutory language indicates that they govern separate issues, and thus can be construed in a consistent manner. In particular, the relevant FOID Card Act provisions concern *revocation*. See 430 ILCS 65/14(c)(1) (making possession of firearms without a FOID Card a felony if the card "is revoked or subject to revocation under Section 8"); 430 ILCS 65/8.2 (police "shall revoke and seize" a FOID Card previously issued if the holder is subject to an order of protection). In contrast, the Domestic Violence Act provision relied upon by the defendant does not purport to empower a court to *revoke* a FOID Card. Rather, it specifies that the court may direct a respondent to temporarily surrender physical possession of a FOID Card and any firearms for "safekeeping," as a condition of the order of protection. 750 ILCS 60/214(b)(14.5)(a) (West 2010). Nowhere does section 214(b)14.5 suggest that such relief

revokes the FOID Card. To the contrary, it provides that the FOID Card "shall be returned to the respondent at the end of the stated period or at expiration of the order of protection." *Id.*

¶ 38 Further differentiating the statutes, the scope of the revocation provisions of the FOID Card Act is broader than section 214(b)(14.5) of the Domestic Violence Act, which applied only to a specific category of petitions for orders of protection. Section 8.2 of the FOID Card Act provides that a FOID Card shall be revoked whenever the holder is "subject to an existing order of protection" and thus calls for revocation upon the entry of *any* order of protection. 430 ILCS 65/8.2 (West 2012). In contrast, the 2011 version of section 214(b)(14.5) of the Domestic Violence Act allowed the trial court to prohibit possession of a FOID Card or firearms only where the "complaint [was] made under a request for an order of protection, that the respondent has threatened or is likely to use firearms illegally against the petitioner," and only if the court was "satisfied that there is any danger of the illegal use of firearms." 750 ILCS 60/214(b)(14.5)(a) (West 2010). That is, the provision empowered the court to require turnover of a respondent's guns and FOID Card only if the case was initially premised on, and the court had made a specific finding of, a threat based on the illegal use of firearms.

¶ 39 Further, we note that there is no indication in the record to suggest that the petition leading to the June 2011 order of protection was based on any threat related to firearms, or that the trial court issuing that order of protection had any reason to know whether the defendant had a FOID Card. Thus, there is simply no basis for the defendant's contention that, by entering an order of protection without marking a particular checkbox, the court in June 2011 "had determined that [the defendant's] firearm ownership did not pose a threat and that he could retain his right to possess firearms."

¶ 40 We recognize that it may initially appear redundant for the Domestic Violence Act to allow the trial court the option to order the turnover of a respondent's FOID Card and firearms, since, under section 8.2 of the FOID Card Act, the entry of any order of protection triggered revocation of a FOID Card. However, the legislature could certainly have determined that—considering the exigent circumstances justifying orders of protection in domestic violence matters— the trial court entering such an order should be empowered to immediately compel the respondent to surrender any firearms and his FOID Card, rather than await later enforcement of the FOID Card Act's revocation provision. As we construe the provisions to have independent purposes and effects, we reject the defendant's contention that any statutory conflict rendered his revocation invalid.

¶ 41 We next address the defendant's due process challenges, which assert two lines of argument. First, —again relying on the checkbox at issue in his statutory conflict argument— the defendant claims that his conviction cannot stand because the "misrepresentation" contained in his June 2011 order of protection estopped the State from prosecuting him for firearm possession. He argues that, because the court entering the order of protection failed to check the box requiring him to surrender his FOID Card and firearms, the order of protection amounted to "an official representation that his firearm ownership was legal." See 720 ILCS 5/4-8(b)(4) (West 2012) ("[A] person's reasonable belief that his conduct does not constitute an offense is a defense if" he "acts in reliance upon an official interpretation of the statute, regulation or order defining the offense."). He claims that he was "affirmatively misled" by an order of protection that purportedly "informed [him] that he was not barred from possessing firearms." Accordingly, he contends that the doctrine of "entrapment by estoppel" bars his conviction.

¶ 42 We disagree. The defendant's argument attempts to transform a trial court's failure to check a box on a pre-printed order of protection form into an affirmative representation by the court that it had considered the defendant's firearm ownership and determined that he did not pose a threat. There is simply no basis for such an assumption.

¶ 43 First, as noted, under the Domestic Violence Act provisions in effect at the time, the checkbox at issue would have only been applicable if the petition was specifically premised on a threat of illegal use of guns, and if the court had made a finding of a "danger of the illegal use of firearms." 750 ILCS 60/214(b)(14.5)(a) (West 2010). However, there is no indication in the record on appeal to suggest that the petition initiated on behalf of the defendant's son, resulting in the June 2011 order, was premised on the defendant's threatened use of guns, or that the court made any corresponding finding. Absent a record of those prior proceedings, we have no reason to believe that the court entering that order had any reason whatsoever to know that the defendant had a FOID Card or possessed any firearms. We note that such gaps in the record are construed against the appellant. See *Midwest Builder Distributing, Inc. v. Lord & Essex, Inc.*, 383 Ill. App. 3d 645, 655 ("When there is a gap in the record that could have a material impact on the outcome of the case, the reviewing court will presume that the missing evidence supported the judgment of the trial court and resolve any doubts against the appellant.").

¶ 44 Moreover, as we have already explained, the FOID Card Act provisions on revocation are distinct from the trial court's ability, upon entering an order of protection, to require a respondent to surrender his firearms and FOID Card for temporary "safekeeping." 750 ILCS 60/214 (b)(14.5)(a) (West 2010). Thus, even assuming the trial court entering the June 2011 order of protection had actually decided that he should not be required to surrender possession of his FOID Card and firearms, this was distinct from the question of revocation. The mere failure to

require him to surrender his guns pursuant to the Domestic Violence Act cannot be construed as an official interpretation of the independent provisions of the FOID Card Act. Thus, we reject the defendant's arguments that the court's failure to check a box in its June 2011 order of protection immunized him from prosecution for firearm possession.

¶ 45 The defendant's second due process argument contends that he was convicted of a "crime of omission" —specifically, the "failure to surrender or transfer firearms"—without receiving adequate notice that such failure would expose him to criminal liability. The defendant's argument relies on the United States Supreme Court's holding in *Lambert v. State of California*, which concerned a provision of the Los Angeles Municipal Code making it a crime for " 'any convicted person' to be or remain in Los Angeles for a period of more than five days without registering." 355 U.S. 225, 226 (1957). The *Lambert* defendant, a Los Angeles resident with a prior felony conviction, claimed she had no knowledge of the requirement that she register. *Id.* at 226-27. The Supreme Court thus addressed "whether a registration act *** violates due process where it is applied to a person who had no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge." *Id.* at 227.

¶ 46 In finding that the defendant's constitutional right to due process had been violated, the Supreme Court emphasized that "we deal here with conduct that is wholly passive – mere failure to register. It is unlike the commission of acts, or the failure to act under circumstances that should alert the doer to the consequences of his deed." *Id.* at 228. The Supreme Court recognized "[t]he rule that 'ignorance of the law will not excuse [citation] is deep in our law," but that "due process places some limits on its exercise. Engrained in our concept of due process is the requirement of notice." *Id.*

¶ 47 The Supreme Court reasoned that although registration laws are "common," the Los Angeles ordinance at issue was different because: "Violation of its provision is unaccompanied by any activity whatever, mere presence in the city being the test. Moreover, circumstances which might move one to inquire as to the necessity of registration are completely lacking." *Id.* at 229. In reversing the defendant's conviction, the Supreme Court found that due process required "actual knowledge of the duty to register or proof of the probability of such knowledge and subsequent failure to comply *** before a conviction under the ordinance can stand." *Id.*

¶ 48 We do not find that *Lambert* supports the due process challenge in this case. First, we reject the defendant's suggestion that the nature of his offense is similar to that in *Lambert*. The defendant argues that "as in *Lambert*, [he] was convicted of a felony for a mere failure to act – a failure to terminate his possession of firearms after his FOID [C]ard was allegedly revoked." We disagree. The registration ordinance at issue in *Lambert* prohibited "conduct that is wholly passive," and the Supreme Court emphasized that its violation was "unaccompanied by any activity whatever." *Id.* at 228-29. That is not the case here. While the defendant attempts to characterize his FOID Card Act offense as a crime of *omission*, the crime can just as easily be viewed as the *commission* of an affirmative act, that is, possession of firearms after revocation of his FOID Card. Indeed, the Criminal Code of 2012 (Code) states that "possession is a *voluntary act* if the offender knowingly procured or received the thing possessed." (Emphasis added.) 720 ILCS 5/4-2 (West 2012).

¶ 49 Moreover, *Lambert* emphasized that the offense in that case, the defendant's "mere presence in the city" without registering, was not a situation involving "the failure to act under circumstances that should alert the doer to the consequences of his deed." *Lambert*, 355 U.S. at 228. Thus, the Supreme Court found that actual notice was required where "circumstances

which might move one to inquire as to the necessity of registration are completely lacking." *Id.* at 229.

¶ 50 We cannot say that such circumstances are "completely lacking" in this case. First, it is not disputed that in 2008, the defendant had lawfully obtained a FOID Card. Having taken advantage of the FOID Card Act to enable his possession of firearms, he can hardly complain that he lacked notice of its provisions. Further, in 2011 he was named as the respondent in a petition that led to an order of protection barring him from, *inter alia*, "physical abuse," "harassment," "intimidation," and "unlawful contact" with his seven-year old son. The issuance of such an order of protection could move a FOID Card holder to inquire as to whether the entry of such an order against him might affect his right to possess firearms.

¶ 51 Further, the *Lambert* court explicitly assumed that the defendant in that case had no actual knowledge of the registration requirement, holding that a conviction without notice could not be sustained where the defendant "did not know of the duty to register and where there was no proof of the probability of such knowledge." *Id.* at 229-30. In contrast, in this case, the State presented testimony that the defendant specifically acknowledged to police and an Assistant State's Attorney that his FOID Card had been revoked. That testimony belies his contention on appeal that he "was convicted of a failure to act, with no evidence that he ever received notice that due process and statute require." See *People v. Molnar*, 222 Ill. 2d 495, 513 (2006) (distinguishing *Lambert* and rejecting defendant's due process challenge to provision of the Sex Offender Registration Act where "there was ample evidence that defendant had actual knowledge of the registration requirements").

¶ 52 Thus, we reject the suggestion that this case is akin to *Lambert* so as to exempt the defendant from the general rule that "ignorance of the law will not excuse." *Lambert*, 355 U.S.

at 228; see also *People v. Izzo*, 195 Ill. 2d 109, 115 (2001) ("A principle deeply embedded in our system of jurisprudence is that one's ignorance of the law does not excuse unlawful conduct.").

¶ 53 Finally, we address the defendant's arguments that his conviction should be reversed due to the State's failure to prove the elements of the offense beyond a reasonable doubt. The applicable standard of review is well settled. "Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48.

¶ 54 First, the defendant claims that the State failed to prove that he possessed a gun between the revocation of his FOID Card on June 6, 2011, and the shooting incident on October 26, 2011. With respect to the element of possession, both the State and the defendant agree that the defendant's conviction was premised on constructive, rather than actual, possession. This concept was thoroughly explained in *People v. Spencer*, 2012 IL App (1st) 102094, where the defendant challenged his conviction for unlawful use of a weapon. *Id.* ¶¶ 17-18.

¶ 55 In assessing the sufficiency of the evidence of possession, our court explained:

> "When a defendant is not found in actual possession, the State must prove constructive possession. [Citation.] To establish constructive possession, the prosecution must prove that the defendant (1) had knowledge of the presence of the firearm and ammunition and (2) exercised immediate and exclusive control over the area where the firearm and ammunition were found. [Citation.] Knowledge may be shown by evidence of a defendant's

> acts, declarations, or conduct from which it can be inferred that he knew the contraband existed in the place where it was found. [Citation.] Control is established when a person has the 'intent and capability to maintain control and dominion' over an item, even if he lacks personal present dominion over it. [Citation.] The defendant's control over the location where weapons are found gives rise to an inference that he possessed the weapons. [Citation.] Habitation in the premises where contraband is discovered is sufficient evidence of control to constitute constructive possession. [Citation.]" *Id.* ¶ 17.

Furthermore, "[i]n deciding whether constructive possession has been shown, the trier of fact is entitled to rely on reasonable inferences of knowledge and possession, absent other factors that might create a reasonable doubt as to the defendant's guilt." *Id.*

¶ 56 In this case, the defendant does not assert that he *never* possessed a firearm, but argues that the State proved only that he had possessed a firearm "on some indefinite date." He asserts that "[n]o rational trier of fact could conclude beyond reasonable doubt" that he possessed the firearm between June 6th and October 26th of 2011.

¶ 57 We disagree. In this case, there was ample evidence from which a rational trier of fact could conclude that the State proved the defendant's constructive possession of one or more firearms after the June 6, 2011 revocation of his FOID Card.

¶ 58 First, there was undisputed testimony that police recovered a number of firearms from the defendant's residence after the shooting. Further, Malone testified that she had seen him with a revolver on multiple occasions, including in October 2011. Indeed, she testified she had "asked

him to get rid of" the weapon, indicating his control of it. Malone also testified that when police arrived after Levar Jr.'s shooting, she saw that they had recovered a gun that resembled the same revolver that she had seen in the defendant's possession.

¶ 59 Further, the court heard testimony from Detective Garza and Assistant State's Attorney Castillo that, shortly after the October 26, 2011 shooting, the defendant admitted that he maintained multiple working firearms in the home. Although the defendant asserts that Detective Garza and Del Castillo's testimony was insufficient because they did not specify any time frame corresponding to the defendant's admissions, that argument is unavailing given the ample additional evidence indicating his possession of firearms well after the June 2011 revocation of his FOID Card. "Viewing the evidence in the light most favorable to the prosecution, coupled with the reasonable inferences that may be drawn therefore, we conclude that a rational trier of fact could have found that the defendant constructively possessed" at least one firearm as of October 26, 2011. *Spencer*, 2012 IL App (1st) 102094, ¶ 18. Thus, we reject the defendant's contention that there was insufficient evidence of possession.

¶ 60 Finally, we address the defendant's contention that the State failed to prove that the defendant "knew that his FOID Card was revoked." Notably, the FOID Card Act provisions at issue do not specify whether such knowledge of the revocation must be proven.

¶ 61 The parties thus disagree as to whether the State was required to prove not only that the defendant knowingly possessed firearms, but also that he knew of his FOID Card's revocation. The defendant argues that this specific knowledge requirement can be derived from the Code provision that "[p]ossession is a voluntary act if the offender knowingly procured or received the thing possessed," 720 ILCS 5/4-2 (West 2012), as well as the provision of the FOID Card Act

specifying that holders whose cards are revoked shall receive written notice stating the grounds for revocation. 430 ILCS 65/9 (West 2012).

¶ 62 The State acknowledges that under the Code, the element of possession requires knowledge. See 720 ILCS 5/4-2 (West 2012) ("Possession is a voluntary act if the offender *knowingly* procured or received the thing possessed, or *was aware of* his control thereof." (Emphases added.)). However, the State argues that the knowledge requirement pertains merely to the "possession of 'the thing' or gun possessed," and does not extend to require the State to prove "knowledge that the FOID Card had been revoked."

¶ 63 As support, the State cites cases involving the offense of possessing a defaced firearm, (720 ILCS 5/24-5(b) (West 2012)), for which our court has held that the State need not prove knowledge of the defaced *nature* of the firearm, but merely knowledge of possession. Our court has explained: "although the offense *** does not identify a mental state, the elements of the offense of possession of a defaced firearm are knowledge and possession. Proof of knowledge of the defacement was not required. Therefore, the State must prove the knowing possession of the firearm by defendant *but need not prove defendant's knowledge of the character of the firearm*." (Emphasis added.) *People v. Falco*, 2014 IL App (1st) 111797, ¶¶ 17-18 (citing *People v. Stanley*, 397 Ill. App. 3d 598, 609 (2009)). Similarly, our court has held that a conviction for possession of a "sawed-off" shotgun did not require specific knowledge as to the character of the gun, but that "it was sufficient for the defendant's conviction that she have knowledge that she possessed the gun in question." *People v. Ivy*, 133 Ill. App. 3d 647, 653 (1985).

¶ 64 The defendant's reply brief urges that the State's reliance on these decisions is misplaced. The defendant argues that, since the State must prove the defendant’s knowledge with respect to firearm possession, the State must also prove the defendant's specific knowledge that his FOID

Card was revoked. The defendant relies largely on section 4-3(b) of the Criminal Code, which provides:

> "If the statute defining an offense prescribed a particular mental state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element. If the statute does not prescribe a particular mental state applicable to an element of an offense (other than an offense which involves absolute liability), any mental state defined in Section 4-4 [intent], 4-5 [knowledge] or 4-6 [recklessness] is applicable." 720 ILCS 5/4-3(b) (West 2012).

The defendant proceeds to argue that: "The State agrees that [the FOID Card Act] does not specify a mental state, and further agrees that the required mental state is knowledge. Thus, section 4-3(b) requires that knowledge applies to all elements of the crime."

¶ 65 The defendant's position appears to be that the first sentence of section 4-3(b) of the Criminal Code governs the FOID Card Act violation at issue, such that the same mental state requirement must apply to each element of the offense. However, that sentence explicitly applies only where the statute defining the offense "prescribe[s] a particular mental state with respect to the offense as a whole." *Id.* That is not the case here, as the relevant FOID Card Act provisions do *not* prescribe any requisite mental state.

¶ 66 Instead, the *second* sentence of section 4-3(b) appears to govern: "*If the statute does not prescribe a particular mental state applicable to an element of an offense* (other than an offense which involves absolute liability), any mental state defined in Section 4-4 [intent], 4-5 [knowledge] or 4-6 [recklessness] is applicable." (Emphasis added.) *Id.* The FOID Card Act

provisions do not indicate that their violation is an "absolute liability" offense. Thus, it appears that the requisite mental state with respect to the revocation of the defendant's FOID Card would be satisfied by proof of "any mental state defined in Section 4-4 [intent], 4-5 [knowledge] or 4-6 [recklessness]." *Id.*

¶ 67 In any event, even if the State were required to prove that the defendant had actual knowledge of his FOID Card's revocation, the State presented sufficient evidence of such knowledge. Specifically, both Detective Garza and Assistant State's Attorney Del Castillo testified that the defendant admitted that his FOID Card had been revoked. The defendant argues that such testimony was unreliable because his admissions followed his arrest; he suggests that "even if he did 'admit' that his FOID [Card] was revoked, in all likelihood that was because police told him he was being arrested for having a revoked FOID Card."

¶ 68 We decline the defendant's invitation to engage in speculation of the circumstances of the defendant's admissions, or to otherwise second-guess the trial court's credibility determinations. The trial court, in its capacity of finder of fact, was certainly entitled to credit the testimony that the defendant was aware of his FOID Card's revocation. Thus, we reject the defendant's arguments that the evidence was insufficient to support his conviction.

¶ 69 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 70 Affirmed.