

No. 1-11-0823

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(3)(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.)	10 CR 7122
)	
RAMI MAAT,)	Honorable
)	Marcus R. Salone,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE NEVILLE delivered the judgment of the court.
Justice Sterba and Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* Trial counsel did not provide ineffective assistance when he chose not to challenge a search warrant that the court issued on the basis of information obtained from a person under arrest. The trial court properly relied on photographs as well as testimony when it recounted the evidence against the defendant.

¶ 2 Following a bench trial, the trial court found the defendant, Rami Maat, guilty of unlawful use of a weapon by a felon (UUWF). On appeal, Maat challenges the constitutionality of the UUWF statute. He also argues that he received ineffective assistance

of counsel, and the court misremembered the evidence when it found him guilty. We again uphold the constitutionality of the UUWF statute, and we find no ineffective assistance of counsel, and no mistake in the court's recitation of the evidence. Accordingly, we affirm the trial court's judgment.

¶ 3

BACKGROUND

¶ 4

On March 30, 2010, Officer David Gushiniere of the Chicago Police Department signed a complaint for a search warrant in which he said:

"John Doe stated to Your Affiant that he has been a member of the G.D.'s Street gang for the past 6 years. John Doe stated that he was in the first floor apartment to the south, at 6951 N. Sheridan Rd., Chicago, Il[,] which is a three flat building, Friday 26 March 2010. John [D]oe stated that his friend named Rami Maat *** lives in that apartment and he showed him a sawed off shotgun. John [D]oe described the weapon as a double barrel blue steel shotgun and that the barrel had been sawed off and that it had a wooden stock with black tape wrapped around it. John Doe stated that it was loaded with two shotgun shells. *** John Doe stated that Rami Maat put the shotgun into a blue book bag and put it on his bed. ***

*** Your Affiant *** learned that Rami Maat is a convicted felon."

The judge signed the warrant giving police permission to search Maat's apartment for guns.

¶ 5 In executing the search warrant on April 1, 2010, Officer Daniel Jarvis found a partly open blue book bag in Maat's bedroom, and the bag contained a loaded sawed off shotgun. Prosecutors charged Maat with UUWF. See 720 ILCS 5/24-1.1(a) (West 2010).

¶ 6 Counsel appointed to represent Maat told the court that she had represented Njandanie Russell, the informant called "John Doe" in the search warrant. Due to the possible conflict, the court appointed a different attorney to represent Maat.

¶ 7 At the bench trial, Jarvis testified that when he went into Maat's bedroom, he saw the book bag. When he looked inside, he saw the shotgun. He identified several photographs as accurate depictions of the bedroom as he found it when he executed the search warrant. Two photographs plainly depicted the shotgun showing through the bag's opening. The prosecution also presented a certified document proving that the State had convicted Maat for robbery in 2002.

¶ 8 Maat testified that late in March 2010, he let Russell stay in Maat's apartment. Russell left a book bag in Maat's bedroom. Maat said he never touched the bag and he never looked inside it.

¶ 9 Defense counsel argued that the gun belonged to Russell, and Maat never knew the bag held a gun. The court said,

"The officer testified that when he went into the bedroom he located the book bag, it was partially open, he could see the sawed-off shotgun. If you believe he could see it you'd have to believe anyone

else that went into that room could see it.

And let's say this is my friend and I let him stay here for a day

*** [and] now, because I'm in and out of this room, I now discover he left a book bag. *** I do think that you would manipulate that bag in some way. I don't believe the defendant."

¶ 10 The court found Maat guilty and sentenced him to three years in prison. Maat now appeals.

¶ 11 ANALYSIS

¶ 12 Second Amendment

¶ 13 Maat first argues that the UUWF statute violates his right to bear arms because the statute makes gun possession a felony for any person previously convicted of a felony, even if the felon keeps the gun in his home for self-defense. See U.S. Const., amend. II.

¶ 14 We review the constitutionality of a statute *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009). We apply intermediate scrutiny to determine whether a statute violates the second amendment. *People v. Spencer*, 2012 IL APP (1st) 102094, ¶ 26. Under this standard of review, “[t]he State must assert a substantial interest to be achieved by restrictions” on the constitutional right, and “the regulatory technique must be in proportion to that interest.” *Central Hudson Gas & Electric Corp. v. Public Service Comm'n*, 447 U.S. 557, 564 (1980). Supreme Court decisions “require *** a fit that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose

scope is ‘in proportion to the interest served,’” *Board of Trustees v. Fox*, 492 U.S. 469, 480 (1989), quoting *In re R. M. J.*, 455 U.S. 191, 203 (1982).

¶ 15 The UUWF statute serves the State's legitimate interest in protecting the public from the danger posed when convicted felons possess firearms. *People v. Crawford*, 145 Ill. App. 3d 318, 321 (1986). The regulations here forbid possession of firearms only by persons proven to have committed felonies. Thus, the restrictions fit proportionally with the interests the statutes serve.

¶ 16 This court has upheld the constitutionality of the UUWF statute in several earlier opinions. *Spencer*, 2012 IL APP (1st) 102094, ¶ 28-31; *People v. Robinson*, 2011 IL APP (1st) 100078, ¶ 26-28. In those cases the court applied dicta from the United States Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), where the court said, "[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons ***." *Heller*, 554 U.S. at 626. We give this dicta dispositive weight (see *Cates v. Cates*, 156 Ill. 2d 76, 80 (1993)), and therefore we again affirm the constitutionality of the UUWF statute.

¶ 17 Ineffective Assistance of Counsel

¶ 18 Next, Maat argues that he received ineffective assistance of counsel because his attorney did not challenge the search warrant. Maat contends that his attorney should have pointed out to the court that the affidavits supporting the warrant do not state that Russell was under arrest when he told police about the gun. To prevail on a claim of ineffective assistance of counsel, "[a] defendant must show that (1) trial counsel's representation fell

below an objective standard of reasonableness, and (2) [h]e was prejudiced by the deficient performance." *People v. Haynes*, 408 Ill. App. 3d 684, 689 (2011). The defendant must overcome the "strong presumption that counsel's performance falls within the wide range of reasonable professional assistance" (*People v. Enis*, 194 Ill. 2d 361, 377 (2000)) to show that "counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different." *Enis*, 194 Ill. 2d at 376.

¶ 19 Thus, for Maat's claim for ineffective assistance of counsel, we must determine whether Maat has shown a reasonable probability that he would have achieved a better result if his counsel had challenged the search warrant. In *People v. Stewart*, 105 Ill. 2d 22 (1984), our supreme court set out the following relevant principles for challenging a search warrant:

"Under Illinois law, prior to *Franks v. Delaware*, a defendant was precluded from attacking the veracity of sworn statements contained in a search warrant affidavit. [Citation.] *Franks v. Delaware* provided a limited exception to this general rule. There is still a presumption of validity with regard to a search warrant affidavit. (*Franks v. Delaware* (1978), 438 U.S. 154, 171, 57 L.Ed.2d 667, 682, 98 S.Ct. 2674, 2684.) To overcome the presumption of validity, a defendant must make a substantial preliminary showing that false statements were deliberately included in the affidavit, or included with a reckless disregard for the truth, and that the statements were necessary to a finding of probable cause. If these conditions are met, the defendant is entitled to an evidentiary hearing where he must prove his allegations of perjury

or reckless disregard for the truth by a preponderance of the evidence. He must also show that, if the false statements are excised, there is insufficient material remaining to establish probable cause." *Stewart*, 105 Ill. 2d at 39-40.

¶20 Our supreme court later held that intentional omissions from the supporting affidavits may invalidate a search warrant when the court needed the omitted information for its probable cause determination. *People v. Petrenko*, 237 Ill. 2d 490, 500 (2010).

¶21 We do not find the information about Russell's arrest critical to the determination of probable cause. First, we note that the court may well have concluded that police had arrested John Doe before he provided the information in the warrant. John Doe told Officer Gushiniere that Doe belonged to the Gangster Disciples, a group not known for voluntarily helping police fight crime and keep guns off the street. Moreover, only reckless or intentional omissions designed to deceive the court can invalidate a search warrant. *Petrenko*, 237 Ill. 2d at 499. Maat has not presented evidence from which this court could infer that recklessness, or an intention to deceive the court, led Officer Gushiniere to make no mention of Doe's arrest. We see no reason that the court could not issue a search warrant in reliance on information obtained from a person under arrest. See *People v. Meyer*, 402 Ill. App. 3d 1089, 1094 (2010). Thus, we find the omitted information does not have "such a character that had it been included in the affidavit it would have defeated probable cause." *Petrenko*, 237 Ill. 2d at 500. Because Maat has not shown a reasonable probability that he would have achieved a better result if counsel had challenged the search warrant, he has not established ineffective assistance of counsel. See *Enis*, 194 Ill. 2d at 376.

¶ 22 Court's Recounting of the Evidence

¶ 23 Finally, Maat asks us to reverse his conviction and remand for a new trial because the court misremembered the evidence at trial. Officer Jarvis testified that when he entered Maat's bedroom, he saw the partially opened book bag, and when he looked in the bag he saw the shotgun. He also testified that several photographs accurately depicted the appearance of the room and the bag at the time of the search. The court said, "The officer testified that when he went into the bedroom he located the book bag, it was partially open, he could see the sawed-off shotgun. If you believe he could see it you'd have to believe anyone else that went into that room could see it." The officer said that he saw the partially opened bag when he entered the room, and the photograph that accurately depicts the appearance of the partially opened bag supports the court's finding that anyone could see the shotgun in the bag. We cannot say that the court misremembered the evidence. The court's recounting of the evidence provides no grounds for reversing the conviction in this case. See *People v. Mitchell*, 152 Ill. 2d 274, 322-24 (1992).

¶ 24 CONCLUSION

¶ 25 We again hold that the UUWF statute does not violate the second amendment to the United States Constitution, even when it prevents a felon from keeping a firearm in his home for self-defense. The record on appeal does not show a reasonable likelihood that a challenge to the search warrant would have succeeded, and therefore Maat has not shown that he received ineffective assistance of counsel. The record does not show that the court misremembered the evidence. Accordingly, we affirm the trial court's judgment.

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¶ 26 Affirmed.