2018 IL App (1st) 140613-U

FIRST DIVISION
February 20, 2018

No. 1-14-0613



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 11 CR 11010 |
| | ) | |
| MICHAEL ELLIS, | ) | Honorable |
| | ) | Dennis J. Porter, |
| Defendant-Appellant. | ) | Judge Presiding. |

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PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justice Cunningham and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not err in denying defendant's motion to suppress evidence and quash his arrest . Based on the law in effect at the time of his arrest, the police had probable cause to search the defendant's car, seize the gun they saw inside the car, and arrest defendant. The possibility that the armed habitual criminal statute could criminalize innocent conduct does not make it facially unconstitutional.

¶ 2 This case is before us on remand from a supervisory order of our supreme court. Defendant Michael Ellis was arrested after Chicago police officers observed him throw a gun into the passenger side of a parked vehicle, close the car door, and walk away. The officers

retrieved the gun and arrested Mr. Ellis. Following a bench trial, Mr. Ellis was convicted as an armed habitual criminal. On appeal, Mr. Ellis contends that (1) the trial court erred in denying his motion to suppress evidence and quash his arrest; and (2) the armed habitual criminal statute is facially unconstitutional.

¶ 3 In our initial decision, issued on March 28, 2016, we vacated Mr. Ellis's conviction on the basis that the police lacked probable cause to search Mr. Ellis's vehicle because any probable cause the officers had at the time of the search was based on a provision of the aggravated unlawful use of a weapon statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010)) later found to be void *ab initio* by the Illinois Supreme Court in *People v. Aguilar*, 2013 IL 112116. In light of our ruling on this first issue, we did not reach Mr. Ellis's second argument that the armed habitual criminal statute is facially unconstitutional. See *People v. Ellis*, 2016 IL App (1st) 140613-U (unpublished order under Supreme Court Rule 23). The State filed a petition for leave to appeal (PLA) to the Illinois Supreme Court from that order.

¶ 4 On September 27, 2017, our supreme court issued a supervisory order, in which it denied the State's PLA but directed this court to vacate our 2016 order. The supreme court instructed us to reconsider "whether the trial court erred in denying defendant's motion to suppress evidence and quash his arrest, and determine if a different result is warranted" in light of the supreme court's decision in *People v. Holmes*, 2017 IL 120407. *People v. Ellis*, No. 120888 (Ill. Sept. 27, 2017) (supervisory order). We vacated our prior order and allowed Mr. Ellis, if he so desired, to file a brief responding to the supervisory order.

¶ 5 The Office of the State Appellate Defender, which represents Mr. Ellis in this appeal, advised this court that it would not respond to the supervisory order. But Mr. Ellis submitted two *pro se* supplemental filings—one through the Office of the State Appellate Defender and one by

a motion filed with this court—in which he attempts to distinguish his case from *Holmes*. We allowed Mr. Ellis leave to file these two *pro se* supplemental briefs and gave the State an opportunity to respond to them, which it did. Mr. Ellis then sought and was granted leave to file a *pro se* reply to the State's response.

¶ 6 The State objects to Mr. Ellis's *pro se* filings on the grounds that he continues to be represented by the Office of the State Appellate Defender on this appeal. We agree with the State that, generally, a defendant has no right to both self-representation and the assistance of counsel. *People v. Williams*, 97 Ill. 2d 252, 267 (1983). However, our supreme court has considered arguments raised in *pro se* filings by represented defendants in capital cases. See, *e.g.*, *People v. Barrow*, 195 Ill. 2d 506, 540 (2001). And, on occasion, this court has entertained such arguments even in non-capital cases. See *e.g.*, *People v. Hodges*, 2014 IL App (1st) 122313-U, ¶ 2; *People v. Harris*, 2012 IL App (1st) 092251, ¶ 8; *People v. Coleman*, 203 Ill. App. 3d 83, 101 (1990); *People v. Barnwell*, 285 Ill. App. 3d 981, 988 (1996); *People v. Lewis*, 243 Ill. App. 3d 618, 638 (1993); *People v. Williams*, 185 Ill. App. 3d 840, 848 (1989); *People v. Warren*, 183 Ill. App. 3d 197, 198 (1989). While this is not a capital case, Mr. Ellis has been sentenced to life in prison. We consider both the merits of Mr. Ellis's arguments and the State's response.

¶ 7 Although we now issue this order in place of our prior order, we draw upon that order to the extent that it is not impacted by our supreme court's supervisory order. Upon our reconsideration of the issue in light of *Holmes*, we find that there was probable cause for the seizure of the gun and for Mr. Ellis's arrest. We also reach and reject Mr. Ellis's argument that the armed habitual criminal statute is facially unconstitutional as a violation of substantive due process. We therefore affirm Mr. Ellis's conviction.

¶ 8 BACKGROUND

¶ 9 Mr. Ellis was arrested after Chicago police officers recovered a handgun from the passenger-side seat of what turned out to be Mr. Ellis's car, into which they had seen Mr. Ellis toss a dark object that appeared to be a gun. The State charged Mr. Ellis with one count of being an armed habitual criminal based on his possession of a firearm after having been convicted of two felonies (720 ILCS 5/24-1.7(a) (West 2010)), two counts of unlawful use or possession of a weapon by a felon (UUWF) (720 ILCS 5/24.1.1(a) (West 2010)), and two counts of aggravated unlawful use of a weapon (AUUW) for carrying a firearm without a valid Firearm Owners Identification (FOID) card (720 ILCS 5/24-1.6(a)(1), (a)(2), (a)(3)(C) (West 2010)). Prior to trial, the State nol-prossed three of Mr. Ellis's charges, including one count of UUWF and the two counts of AUUW, ultimately proceeding to trial only on one count of UUWF and the armed habitual criminal count.

¶ 10 Mr. Ellis waived his right to counsel. Before trial, he filed a *pro se* motion to suppress the evidence recovered from his vehicle and to quash his arrest. Mr. Ellis argued that the gun was recovered unlawfully and must not be introduced at trial. Officers Esquibel and Valentin testified at the hearing on Mr. Ellis's motion. Officer Esquibel stated that he approached the car because he found Mr. Ellis's actions to be suspicious, and Officer Valentin explained that he approached the car because of what he "believed to be a gun being tossed in the car." Officer Esquibel testified that he did not know who Mr. Ellis was or whether Mr. Ellis had a FOID card and that no officer conducted a field investigation to acquire this information prior to recovering the gun. Officer Esquibel also stated that when he witnessed Mr. Ellis putting an object in the car, he did not know whether Mr. Ellis was breaking any law. Officer Esquibel also testified that although the "gun was fully assembled," at the time he approached the car he did not know whether the

gun was being transported in—what what Mr. Ellis referred to as—a "non-functioning broken down state." Both officers testified that none of the officers on the scene had a warrant to search Mr. Ellis's vehicle, nor did any officer have a key to the car prior to retrieving the gun. Mr. Ellis argued that the gun must be excluded from the evidence presented and admitted at trial because the officers acted without a warrant, the seizure did not fall within any exception to the warrant requirement, and the officers had no probable cause to arrest him.

¶ 11 The trial court denied Mr. Ellis's motion to suppress. The court found the officers' testimony that they saw Mr. Ellis throw a gun into the vehicle and walk away to be credible. Finding the officers had probable cause, the trial court explained:

> "When the officers came up to the car, they were standing where they had a right to be, that is, on the public street or public way, and they could see a gun in the car. So there is no search. They had probable cause at that point to search the vehicle and seize the weapon and probable cause to arrest the Defendant."

¶ 12 At trial, the State's case against Mr. Ellis consisted primarily of the testimony of three of the four police officers involved in his arrest, whose accounts of the day's events were generally consistent and found to be credible by the trial court. Mr. Ellis declined to take the stand in his own defense, offered no evidence to rebut the officers' testimony, and does not contest the substance of their testimony on appeal. The following account of the incident leading to Mr. Ellis's arrest was presented at trial.

¶ 13 On April 27, 2011, at about 10:50 p.m., four Chicago police officers occupying two police vehicles were heading north on Harding Avenue, approaching Thomas Street. The officers were assigned to routine patrol in that area due to recent high crime activity and had their headlights off to avoid detection. Officers Esquibel and Valentin, who were in the front vehicle,

had an unobstructed view of Mr. Ellis standing next to a burgundy Ford Taurus which was parked on the north side of Thomas Street facing east. The officers saw Mr. Ellis standing by the passenger-side door, "looking in all multiple directions in a very suspicious manner." Mr. Ellis opened the passenger-side door, removed a dark object from his waistband that appeared to the officers to be a gun, and tossed the object into the car. Mr. Ellis then closed the door and began quickly walking westbound on Thomas Street. These observations were relayed via radio to Officers De La Rosa and Rojas, who were in the rear police vehicle.

¶ 14 As Mr. Ellis walked down Thomas Street, Officers Esquibel and De La Rosa approached the car and, standing outside it and looking through the passenger-side door window, observed a nickel-plated revolver sitting on the passenger seat. The car was otherwise empty. Officer De La Rosa opened the unlocked passenger-side door, took the gun from the seat, and placed it in an evidence bag. The officers then ran a search on the car's license plate number and learned that it was registered in Mr. Ellis's name.

¶ 15 As Officers Esquibel and De La Rosa investigated the parked car, Officer Rojas exited his vehicle and approached Mr. Ellis on foot. Before Officer Rojas reached Mr. Ellis, Officer De La Rosa used the radio to inform the other officers that a gun was recovered from the parked car. After receiving that message, Officer Rojas immediately arrested Mr. Ellis and placed him in the back of his police vehicle. A custodial search of Mr. Ellis produced car keys belonging to the parked car. The officers then transported Mr. Ellis to the 11th district police station.

¶ 16 The State's case included the testimony of Officers Esquibel, Rojas, and De La Rosa, who recounted the events surrounding Mr. Ellis's arrest as summarized above. Officer Esquibel identified the gun recovered from the vehicle, and the gun was entered into evidence. The State also presented evidence of two of Mr. Ellis's prior felony convictions by calling the arresting

officers from those incidents, who testified that Mr. Ellis pled guilty in 2004 to the crime of delivery of a controlled substance, and was found guilty in 2006 of possession of a controlled substance with intent to deliver. After the State rested, Mr. Ellis presented his case, again waiving his right to legal counsel. Mr. Ellis recalled Officers Esquibel and De La Rosa and called for the first time Officer Valentin; the officers' testimony consisted primarily of the same account of events described in the State's case. Mr. Ellis declined to testify in his own defense.

¶ 17 The trial court found Mr. Ellis guilty of being an armed habitual criminal and of UUWF, and merged the latter offense into the former. Following the denial of Mr. Ellis's multiple posttrial motions, the court sentenced him to natural life in prison on February 10, 2014. The trial court viewed this sentence as mandatory under the habitual criminal sentencing requirements. See 730 ILCS 5/5-4.5-95 (a)(1), (5) ("Every person who has been twice convicted [of a] *** Class X felony *** and who is thereafter convicted of a Class X felony *** shall be adjudged an habitual criminal" and "shall be sentenced to a term of natural life imprisonment.")

¶ 18 JURISDICTION

¶ 19 Mr. Ellis filed a timely notice of appeal on March 6, 2014. That gives this court jurisdiction under article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Oct. 1, 2010); R. 606 (eff. Mar. 20, 2009). The sequence of events following our initial decision on appeal is outlined above and the case is again before this court because of our supreme court's supervisory order.

¶ 20 ANALYSIS

¶ 21 As noted above, Mr. Ellis makes two arguments on appeal: (1) that evidence of the gun seized from his car should have been suppressed and his arrest quashed as fruits of an

unreasonable search and seizure, and (2) that the armed habitual criminal statute is facially unconstitutional. We address each of these arguments in turn.

¶ 22 A. Motion to Suppress

¶ 23 When reviewing a trial court's ruling on a motion to suppress evidence and quash arrest, we give great deference to the trial court's findings of fact and will reverse them only where they are against the manifest weight of the evidence. *Holmes*, 2017 IL 120407, ¶ 9. However, our review of the trial court's ultimate ruling on whether the evidence should be suppressed and the arrest quashed is *de novo*. *Id.*

¶ 24 Individuals in Illinois are guaranteed the right to be free from unreasonable searches and seizures under both the state and federal constitutions. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. When a search or seizure is conducted "without prior approval by judge or magistrate," *i.e.*, without a warrant, the conduct is considered "*per se* unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions." (Internal quotation marks omitted.) *Minnesota v. Dickerson*, 508 U.S. 366, 372 (1993); see also *People v. LeFlore*, 2015 IL 116799, ¶ 17. However, the constitution "does not proscribe all searches and seizures but only those that are unreasonable, thereby upholding at the same time fair leeway for the enforcement of law and the protection of the community at large." *People v. Hall*, 352 Ill. App. 3d 537, 545 (2004). Our supreme court follows the "limited lockstep" approach to interpreting related provisions in the state and federal constitutions, which requires the court to "look first to the federal constitution, and only if federal law provides no relief turn to the state constitution to determine whether a specific criterion—for example, unique state history or state experience—justifies departure from federal precedent." (Internal quotation marks omitted.) *People v. Caballes*, 221 Ill. 2d 282, 309 (2006).

¶ 25 As an initial matter, we reject the State's argument that no search was performed by the officers because the gun was clearly visible when they looked inside the car through the window. We agree with Mr. Ellis that the act of opening the door and reaching inside the car was a search. But this does not necessarily mean that a warrant was required. Instead, as we recognized in our initial order in this case, the central issue is whether the State's intrusion infringed on Mr. Ellis's " 'constitutionally protected reasonable expectation of privacy.' " *New York v. Class*, 475 U.S. 106, 112 (1986) (quoting *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). See *People v. Ellis*, 2016 IL App (1st) 140613-U, ¶ 17.

¶ 26 We have long recognized an automobile exception to the warrant requirement. Under the automobile exception, law enforcement officers may undertake a warrantless search of a vehicle if there is probable cause to believe that the automobile contains evidence of criminal activity that the officers are entitled to seize. *People v. James*, 163 Ill. 2d 302, 312 (1994). The presence of probable cause was also central to the issue of whether the officers' *seizure* of the gun was constitutionally permissible. The warrantless seizure of an object is permissible if "(1) the officers are lawfully in a position from which they view the object; (2) the incriminating character of the object is immediately apparent; and (3) the officers have a lawful right of access to the object." *People v. Jones*, 215 Ill. 2d 261, 271-72 (2005). However, these criteria cannot be met unless "the incriminating character of the object [was] immediately apparent," such that the police had probable cause to believe the object was evidence of criminal activity. See *id.* at 272. And unless the police had probable cause to believe that Mr. Ellis had committed a crime, they had no basis for his arrest. *People v. Wear*, 229 Ill. 2d 545, 563 (2008).

¶ 27 In the present case, Chicago police officers approached Mr. Ellis's vehicle and observed a gun sitting in the passenger seat, which they suspected was placed there by Mr. Ellis who they

had just watched throw a dark object into the vehicle. In its oral ruling on Mr. Ellis's motion to suppress, the trial court explained the basis for its conclusion that the officers had probable cause to search the car, seize the gun, and arrest Mr. Ellis only by stating that "[the officers] could see a gun in the car." The parties agree that on the date of the incident, April 27, 2011, the AUUW statute prohibited the possession of an operable handgun in public if it was uncased, loaded, and immediately accessible at the time of the offense. 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010). Based on the law then in effect, the officers' observation of what appeared to be an uncased handgun in the car, coupled with their recent observation of Mr. Ellis placing an object in the car, would provide probable cause for the search, seizure, and arrest.

¶ 28 However, in our initial order in this case we found that there was no probable cause because, in 2013, our supreme court found this Class 4 form of the AUUW offense to be unconstitutional on its face and void *ab initio*. *Aguilar*, 2013 IL 112116, ¶¶ 21-22. We reasoned that suspected criminal activity based on a statute that was void from its inception could not supply officers with probable cause to search, seize, or arrest. *Ellis*, 2016 IL App (1st) 140613-U, ¶ 24. Because there was no other basis for finding probable cause, and because it was clear that Mr. Ellis's conviction was dependent on this evidence, we reversed his conviction.

¶ 29 In this court's initial order we relied in large part on our prior decision in *People v. Holmes*, 2015 IL App (1st) 141256, *rev'd*, 2017 IL 120407 (see *Ellis*, 2016 IL App (1st) 140613-U, ¶ 32), but that decision was subsequently overturned by our supreme court (*Holmes*, 2017 IL 120407). Our supreme court held that "the void *ab initio* doctrine does *not* retroactively invalidate probable cause based on a statute later held unconstitutional on federal constitutional grounds or on state constitutional grounds subject to the limited lockstep doctrine." (Emphasis added.) *Id.* ¶ 37. Because the police officers in *Holmes* had probable cause—at the time of his

arrest—to arrest the defendant for violating the AUUW statute, the arrest was valid, despite the fact that the portion of the statute relied upon was later declared unconstitutional. *Id.* ¶ 39.

¶ 30 Our supreme court's decision in *Holmes* dictates that we reach a different result in this case than we reached in our initial decision. When the police saw Mr. Ellis throw an object that resembled a gun into the vehicle, then saw that gun sitting on the passenger seat from their vantage point right outside the vehicle, the officers had probable cause to search the car, seize the gun, and arrest Mr. Ellis because, at the time these events happened, a statute prohibited possession of an uncased, loaded, and immediately accessible handgun. See 720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2010). Following *Holmes*, we must conclude that probable cause was not vitiated by the subsequent holding in *Aguilar* that section 24-1.6(a)(1), (a)(3)(A), of the AUUW statute was void *ab initio*.

¶ 31 In his *pro se* filings, Mr. Ellis cites *People v. Trisby*, 2013 IL App (1st) 112552, for the proposition that, in his words, "a single observation of an unidentified object is not probable cause to search." But here, the object the police officers initially saw Mr. Ellis throw into his car was no longer unidentified at the time the police searched Mr. Ellis's vehicle—the police searched the vehicle only after they identified the thrown object as a gun, which they observed sitting on the passenger seat of the car. Mr. Ellis also makes much of Officer Esquibel's testimony at the motion to suppress hearing that he did not know that the gun he saw was not in a broken-down state for transport. But, importantly, to have probable cause, the police were not required to *know* Mr. Ellis was breaking the law at the time they searched his car. Rather, they were only required to have sufficient information to "justify a reasonable person to believe" that he was committing a crime by possessing the gun. *Jones*, 215 Ill. 2d at 273-74. As we have discussed above, viewing the gun on the passenger seat was sufficient to justify such a belief at

that time and, thus, Mr. Ellis's reliance on *Trisby* is unpersuasive.

¶ 32 Mr. Ellis also claims in his *pro se* filings that the State has "waived" reliance on *Michigan v. DeFillippo*, 443 U.S. 1 (1979), and *United States v. Charles*, 801 F.3d 855 (7th Cir. 2015), because the State did not cite those cases in its original appellate brief. Regardless of whether the State cited those cases, our supreme court clearly cited them in *Holmes*, the decision it expressly ordered us to reconsider this case in light of. Under these circumstances, there can be no forfeiture. And, as we have explained, the *Holmes* decision is controlling here.

¶ 33 B. Constitutionality of the Armed Habitual Criminal Offense

¶ 34 Mr. Ellis also contends that we should vacate his conviction for the offense of being an armed habitual criminal (720 ILCS 5/24-1.7 (West 2010)), arguing that the statute defining the offense violates due process and is therefore facially unconstitutional. Mr. Ellis argues that under Illinois law, "the possession of a firearm—even by a person with two qualifying convictions under the [armed habitual criminal] statute—is *not*, by itself, a crime" and that possession only becomes a crime if the person does not have a FOID card. Because the armed habitual criminal statute criminalizes possession of a firearm regardless of whether a person has a FOID card, Mr. Ellis argues, it is facially unconstitutional because it "potentially criminalizes innocent conduct." *People v. Carpenter*, 228 Ill. 2d 250, 268 (2008).

¶ 35 A challenge to the constitutionality of a statute may be raised at any time (*People v. Boclair*, 202 Ill. 2d 89, 108 (2002)) and we review such a claim *de novo* (*People v. Patterson*, 2014 IL 115102, ¶ 90). Statutes are presumed to be constitutional. *People v. Fulton*, 2016 IL App (1st) 141765, ¶ 20. The "heavy burden" of overcoming this presumption belongs to the party challenging the statute, and it is our duty to uphold the constitutionality of a statute "whenever reasonably possible, resolving any doubts in favor of its validity." *Id.* (quoting *Patterson*, 2014

IL 115102, ¶ 90). To prove that a statute is facially unconstitutional, "the challenger must establish that no set of circumstances exists under which the [statute] would be valid." (Internal quotation marks omitted.) *People v. Greco*, 204 Ill. 2d 400, 407 (2003).

¶ 36 Pursuant to the armed habitual criminal statute, section 24-1.7 of the Criminal Code of 2012 (720 ILCS 5/24-1.7 (West 2012)), any person who possesses a firearm is a Class X felon if they were "previously twice-convicted of certain enumerated offenses, including all forcible felonies, unlawful use of a weapon by a felon, and Class 3 or higher drug-related felonies." *Fulton*, 2016 IL App (1st) 141765, ¶ 22. We acknowledge that section 10 of the FOID Card Act (430 ILCS 65/10(c) (West 2012)) permits even a twice-convicted felon to apply for and potentially obtain a FOID card. And, as Mr. Ellis states, the armed habitual criminal statute "does not limit its application to the *unlawful* possession of a firearm—*i.e.*, possession by those who have been denied a permit to possess one" (emphasis in original).

¶ 37 Based on these facts, Mr. Ellis argues that the armed habitual criminal statute violates due process because it "sweeps too broadly by punishing innocent as well as culpable conduct" (quoting *People v.* Wick, 107 Ill. 2d 62, 66 (1985)). He cites to the plurality opinion in *Coram v. State*, 2013 IL 113867, ¶¶ 58-59, in which our supreme court stressed the need for "*individualized* consideration of a person's right to keep and bear arms" under the FOID Card Act (emphasis in original).

¶ 38 This court has considered and rejected this exact argument on several occasions. See *People v. Brown*, 2017 IL App (1st) 150146, ¶¶ 29-31; *People v. West*, 2017 IL App (1st) 143632, ¶ 22; *People v. Fulton*, 2016 IL App (1st) 141765, ¶¶ 23-24; *People v. Johnson*, 2015 IL App (1st) 133663, ¶¶ 27-29. As pointed out by this court in *Johnson*:

> "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." *Johnson*, 2015 IL App (1st) 133663, ¶ 27.

¶ 39 In our previous decisions we rejected any argument based on *Coram*, both because, after *Coram* was decided, the FOID Card Act was amended to narrow the situations in which a convicted felon could be issued a FOID card, and because *Coram* dealt only with the FOID Card Act and not the armed habitual criminal statute. *Fulton*, 2016 IL App (1st) 141765, ¶ 24; *Johnson*, 2015 IL App (1st) 133663, ¶ 29.

¶ 40 We are unpersuaded by the variety of cases Mr. Ellis relies on to support his argument that the armed habitual criminal statute does not rationally serve its purpose because it criminalizes innocent conduct. See *People v. Madrigal*, 241 Ill. 2d 463 (2011); *Carpenter*, 228 Ill. 2d 250; *People v. Wright*, 194 Ill. 2d 1 (2000); *People v. Zaremba*, 158 Ill. 2d 36 (1994); *Wick*, 107 Ill. 2d 62. As we noted in *Fulton*:

> "[A] twice-convicted felon's possession of a firearm is not 'wholly innocent' and is, in fact, exactly what the legislature was seeking to prevent in passing the armed habitual criminal statute. The statute's criminalization of a twice-convicted felon's possession of a weapon is, therefore, rationally related to the purpose of 'protect[ing] the public from the threat of violence that arises when repeat offenders possess firearms.' " *Fulton*, 2016 IL App (1st) 141765, ¶ 31 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27).

We find this same reasoning distinguishes all of the cases on which Mr. Ellis relies. Mr. Ellis does not provide us with any basis for departing from our previous decisions on this issue. We

therefore reject Mr. Ellis's argument that the armed habitual criminal statute is facially unconstitutional.

¶ 41 CONCLUSION

¶ 42 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 43 Affirmed.