2018 IL App (1st) 163338-U
No. 1-16-3338
Order filed July 17, 2018

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

HAL BASKIN, Plaintiff-Appellant, v. ILLINOIS CONCEALED CARRY LICENSING REVIEW BOARD, an Illinois administrative agency; ROBINZINA BRYANT, as Chair of the Illinois Concealed Carry Licensing Review Board, and SERGIO ACOSTA, JAMES CAVENAUGH, PATRICK JOHN CHESLERY, JOHN DIWIK, PATRICK G. MURPHY, and VIRGINIA WRIGHT, as members of the Illinois Concealed Carry Licensing Review Board; ILLINOIS DEPARTMENT OF STATE POLICE, an Illinois administrative agency; HIRAM GRAU, as Director of the Illinois State Police, and JESSICA TRAME, as Bureau Chief of Firearms Services, Illinois State Police. Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County. No. 14 CH 07921 The Honorable Kathleen Kennedy, Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Mason and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held*: The decision of the Illinois Concealed Carry License Review Board denying plaintiff a concealed-carry license was not clearly erroneous in light of his extensive arrest record.

¶ 2 After the Chicago police department and the Cook County sheriff's office objected to plaintiff Hal Baskin's application for a concealed-carry license, the Concealed Carry Licensing Review Board and the Illinois State Police determined that Baskin posed a danger to himself or others or a threat to public safety, and rejected his application.

¶ 3 Baskin now argues the Board and the Illinois State Police violated his due process and equal protection rights by (i) "denying him the opportunity to appeal before the Board, present evidence in support of his application, and confront or challenge the evidence against him," and (ii) using his prior arrests to support the denial of his license.

¶ 4 We affirm. Baskin was notified about the objections to his license application and given an opportunity to respond. The Board did not err in considering Baskin's arrest history, as the Act contemplates the Board relying on this type of evidence. Nor did the Board's reliance on hearsay violate Baskin's constitutional rights. The Act's standard for denying a license, based on an applicant posing a danger to himself or others or a threat to public safety, conforms to the dicates of the second amendment and is not unconstitutionally vague.

¶ 5 Background

¶ 6 The Firearm Concealed Carry Act

¶ 7 The Firearm Concealed Carry Act provides: "The Department [of State Police] shall issue a license to carry a concealed firearm under this Act to an applicant who: (1) meets the qualifications of Section 25 of this Act; (2) has provided the application and documentation required in Section 30 of this Act; (3) has submitted the requisite fees; and (4) does not pose a danger to himself, herself, or others, or a threat to public safety as determined by the Concealed

Carry Licensing Review Board in accordance with Section 20." 430 ILCS 66/10(a) (West 2014). Under section 25, an applicant must (i) be at least 21 years old; (ii) possess a current Firearm Owner's Identification Card (FOID card); (iii) have no convictions within five years before the application date of (a) a misdemeanor involving the use of threat of physical force or violence or (b) two or more violations related to driving under the influence of alcohol or drugs; (iv) not be subject to a pending arrest warrant or proceeding for an offense that could lead to disqualification; (v) not have been in residential or court-ordered drug or alcohol treatment within five years before the application date; and (vi) complete firearms training and education. 430 ILCS 66/25 (West 2014).

¶ 8 Section 30 governs the contents and documentation in the application. It requires, in addition to a valid drivers' license or state ID, FOID card, and various waivers, an affirmation that the applicant has not been convicted or found guilty of: (i) a felony; or (ii) a misdemeanor involving the use or threat of physical force or violence to any person or two or more violations related to driving while under the influence of alcohol or drugs within the five years before the application date. 430 ILCS 66/30(b) (West 2014).

¶ 9 Section 15(a) grants law enforcement agencies discretion to submit objections based on a reasonable suspicion of an applicant's danger to himself or others within 10 days of completing background checks. 430 ILCS 66/15(a).

¶ 10 The Illinois Licensing Review Board

¶ 11 By statute, the Board consists of seven commissioners appointed by the governor with Senate approval. 430 ILCS 66/20(a) (West 2014). Each commissioner must have five years' experience in relevant areas of expertise: one commissioner as a federal judge, two commissioners as U.S. Department of Justice attorneys, three commissioners as federal agents or

employees with criminal justice investigative experience under the DOJ, DEA, DHS, or FBI, and one commissioner as a licensed physician or clinical psychologist with expertise in diagnosing and treating mental illness. 430 ILCS 66/20 (a) (West 2014). If the Board determines by a preponderance of the evidence that the applicant poses a danger to himself or herself or others, or is a threat to public safety, the Board "shall" affirm the objection of the law enforcement agency or the Department and notify the Department of the applicant's ineligiblity for the license. 430 ILCS 66/20 (g) (West 2014).

¶ 12 Denial of Baskin's Application

¶ 13 Baskin, a Chicago resident for over 55 years, owns a handgun and holds a FOID Card issued by the State of Illinois. In 2014, Baskin applied for a license to carry a concealed weapon under the Firearm Concealed Carry Act. 430 ILCS 66/10(a) (West 2014). The Chicago Police Department and the Cook County Sheriff's Department each filed objections to the application based on Baskin's record of 29 arrests.

¶ 14 The Chicago Police Department submitted Baskin's arrest record and related police reports, and listed four specific arrests as the basis for its objection. First, in 2004, Baskin was arrested and charged with aggravated battery of a police officer that resulted in a not guilty finding. In 2006, Baskin was arrested for making a telephone threat and, one week later, he was arrested for battery at a community center. The investigation of the telephone threat case was suspended pending cooperation from the victim, who was a reverend. Baskin was arrested on the battery charge in a community center when he confronted two acquaintances about giving a speech. When the two speakers told Baskin they could not continue because of permit issues, Baskin pushed both victims, causing a crowd to gather that blocked their way out of the building. The two victims declined to prosecute. Finally, in 2011, Baskin was involved in a confrontation

at a polling place in a Chicago public school. Police were called in when Baskin blocked the entrance and verbally threatened an election judge. Baskin pointed his finger in a police officer's face and chest, called him a "bitch," and said he did not care who the officer was. Baskin was arrested for assault, aggravated assault of a police officer and failure to comply with an order and later found not guilty of aggravated assault of a police officer and failure to comply with an order. The assault charge was stricken with leave to reinstate.

¶ 15 The Cook County Sheriff's office summarized the arrests that established a "reasonable suspicion" that Baskin was a danger to others and a threat to public safety. Baskin was arrested 29 times, including 10 felony arrests. Baskin had three misdemeanor convictions.

¶ 16 In April 2014, the Illinois State Police denied Baskin's application, based on their determination by a preponderance of the evidence that Baskin posed a "danger to [him]self or others/are a threat to public safety." Baskin then filed an action for administrative review in the circuit court, seeking reversal of the Board's final administrative decision. The Illinois State Police and the Chicago Police Department filed an answer under seal in the circuit court. During the administrative review, new administrative regulations became effective, allowing an applicant to submit additional material for the Board's consideration after a law enforcement agency's objection. On motion of the Illinois State Police and the Board, the trial court remanded for further administrative proceedings.

¶ 17 In September 2014, the Board notified Baskin of the law enforcement objections to his application and invited Baskin to submit "any relevant evidence" for the Board's consideration. Baskin submitted a document stating he met the minimum qualifications for a concealed carry license, including being over the age of 21 and never having been convicted of a felony. Baskin did not dispute his criminal history or arrest record nor did he request a hearing.

¶ 18 In November, the Board issued an order determining, by a preponderance of the evidence, that Baskin was "a danger to himself, is a danger to others, or poses a threat to public safety." The Board sustained the objection and directed the State Police to deny his application.

¶ 19 The matter returned to the circuit court where the parties briefed and argued the issues. In November 2016, the trial court affirmed the Board's final decision. The trial court noted that the Board provided Baskin with an opportunity to respond to the objections and that he had done so. Baskin did not request a hearing before the Board. Citing *Moustakas v. Margolis*, 154 F. Supp. 3d 719, 730-732 (N. D. Ill. 2016), the trial court found the administrative procedures comported with due process requirements. There was no basis to overturn the decision to deny Baskin a concealed carry license as the Board's order was neither against the manifest weight of the evidence nor clearly erroneous,

¶ 20 Analysis

¶ 21 Standard of Review

¶ 22 The Administrative Review Law governs judicial review of the denial of a concealed carry license. 430 ILCS 66/87(b) (West 2014). In cases arising under the Administrative Review Law, we review the administrative agency's decision, not the trial court's decision. *Jankovich v. Illinois State Police*, 2017 IL App (1st) 160706, ¶ 30. Our standard of review depends on whether the issue resolved by the agency presented a question of fact, a question of law, or a mixed question of law and fact. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 216 Ill. 2d 455, 471 (2005); *Jankovich*, 2017 IL App (1st) 160706, ¶ 30.

¶ 23 When the agency resolves a question of fact, we defer to that resolution and reverse only when it is against the manifest weight of the evidence. *Id.* at 471-72. A mixed question of law and fact, which asks " 'whether established facts satisfy applicable legal rules' " entails "a clear-

error standard, which defers 'to an agency's experience in construing and applying the statutes that it administers.' " *Jankovich*, 2017 IL App (1st) 160706, ¶¶ 30-31 (quoting *Comprehensive Community Solutions, Inc.*, 216 Ill. 2d at 471). We review an agency's conclusion on a question of law *de novo*. *Comprehensive Community Solutions, Inc.*, 216 Ill. 2d at 471.

¶ 24 Opportunity to be Heard

¶ 25 Baskin asserts the Licensing Review Board denied him an opportunity to present evidence or to confront and challenge evidence on which the Board relied, violating his due process and equal protection rights assured by the United States and Illinois Constitutions. Baskin asserts he met the qualification to be approved for a license but that the Board gave him no opportunity to be heard on the objections. The record, however, demonstrates otherwise.

¶ 26 After receiving Baskin's application, the Illinois State Police entered his information into the database used by other law enforcement agencies. 430 ILCS 66/10(j) (West 2014) ("No later than 10 days after receipt of a completed application, the Department shall enter the relevant information about the applicant into the database under subsection (i) of this Section which is accessible by law enforcement agencies."). Without citation to the record or caselaw, Baskin argues the statute poses a risk of depriving applicants of notice of objections and "any opportunity whatsoever" to be heard. The record disproves this claim because not only was Baskin given the opportunity to respond, but he also did so, in writing. The Board fully complied with the statutory requirements and did not deny Baskin his due process rights.

¶ 27 Hearsay Objection

¶ 28 Baskin argues that the information in the reports submitted by the agencies was predicated on "hearsay, unverifiable truths and in many cases the outright prejudice of law

enforcement officials who have historically resented the Appellant's advocacy for the right and dignity of his community." The State counters that Baskin forfeited this issue because he made no hearsay objection in his submission to the Board. See *Board of Education, Joliet Township High School District No. 204 v. Board of Education, Lincoln Way Community High School District No. 210*, 231 Ill. 2d 184, 205 (2008) (issues not raised before administrative agency are forfeited); *Texaco-Cities Service Pipeline Co. v. McGaw*, 182 Ill. 2d 262, 279 (1998) (administrative review is confined to proof offered before agency). In his submission to the Board, Baskin did not oppose the reports or deny the arrests occurred. Baskin's approach was that he fulfilled the "essential" requirements of the statute. 430 ILCS 66/25 (West 2014).

¶ 29 Forfeiture aside, the State addresses Baskin's argument, and, in the interest of judicial efficiency, we will too.

¶ 30 Generally, hearsay evidence is inadmissible in an administrative proceeding. *Jankovich,* 2017 IL App (1st) 160706, ¶ 54 (citing *Abrahamson v Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 94 (1992)). Rule 802 of the Illinois Rules of Evidence provides that hearsay is inadmissible except "by statute as provided in Rule 101." See Ill. R. Evid. 802 (eff. Jan. 1, 2011). Nevertheless, the plain language of the Act "shows the legislature's intent not to limit considerations for an application to convictions" and allows the Board to consider an applicant's entire criminal history as well as the objections based on a reasonable suspicion. *Perez v. Illinois Concealed Carry Licensing Review Bd.*, 2016 IL App (1st) 152087, ¶ 21 (2017). See *Jankovich*, 2017 IL App (1st) 160706, ¶¶ 55-56 ("The language of the Act establishes the intent to permit the admission of hearsay evidence before the Board for considering a concealed carry license application.") (quoting *Perez*, 2016 IL App (1st) 152087, ¶ 24). In raising an objection, law enforcement agencies must submit "any information relevant to the objection,"

thus permitting an exception to the rule against hearsay. *Perez*, 2016 IL App (1st) 152087, ¶ 24: 430 ILCS 66/15(a), 20(e), 35(2) (West 2014). The statutory scheme permits an exception as it requires the Illinois State Police and the Board to consider an applicant's criminal history, including arrests, when reviewing an application. *Id.*

¶ 31 The administrative record contains objections to Baskin's application filed under seal by both the Chicago Police Department and the Cook County Sheriff's Office, based on their reasonable suspicion that he posed a danger to himself or others or public safety. Baskin argues the basis of information in the arrest reports was "hearsay and opinions of the law enforcement officers narrating the reports" and that he had no opportunity for a hearing before the board "to challenge and confront the circumstances and truth of the matters that were referred to in the reports." Baskin complains further that he was not given an opportunity to present witnesses regarding his good character and non-violent background. Baskin's argument, however, ignores the statute's provision allowing objections to an application.

¶ 32 Baskin quotes *Perez*, where this court found that "an objection from a law enforcement agency under section 15(a) of the Act is not required to be based on a prior conviction, but rather 'a reasonable suspicion that the applicant is a danger to himself or herself or others, or a threat to public safety.' " *Perez*, 2016 IL App (1st) 152087, ¶ 17; 430 ILCS 66/15(a) (West 2014). Hence, the Board's decision may consider the number of prior arrests. While Baskin was never convicted of a felony, he had 29 arrests over a 40 years, including 10 felony arrests.

¶ 33 Baskin points out that "most" of the arrests in his "history of law enforcement contacts" did not result in convictions for any serious or felony offenses. True, but the lack of convictions is not determinative. "Acquittal does not demonstrate a defendant's innocence." *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL App (1st) 093547–B, ¶ 134 (citing *People v.*

Jackson, 149 Ill.2d 540, 549 (1992)). "It means only that the prosecution was unable to prove the defendant guilty beyond a reasonable doubt." *Id.* The record shows that Baskin plead guilty in 2003 to resisting arrest, was convicted of criminal trespass in 1971, and was twice convicted of disorderly conduct stemming from two separate incidents in 1972. Additionally, some charges were never pursued after the victims declined to prosecute. The investigation of the 2006 arrest for making a telephone threat was suspended pending cooperation from the victim, who was a reverend. One week later, Baskin was arrested for battery at a community center when he confronted two speakers about giving a speech. Baskin pushed both victims, causing a crowd to gather that blocked their way out of the building. Even though one of the victims was bruised, both victims declined to prosecute.

¶ 34 And, we note, both agencies enumerated specific and serious offenses. The Chicago Police Department listed four specific arrests in its objection: (i) aggravated battery of a police officer in 2004 that resulted in a not guilty finding: (ii) a 2006 arrest for making a telephone threat and, one week later, (iii) an arrest for battery at a community center; and, (iv) a 2011 arrest for aggravated assault of a police officer after a confrontation at a polling place on Election Day. The Cook County Sheriff's objection pertains to the arrests that established a "reasonable suspicion" that Baskin posed a danger to others and a threat to public safety. These included 29 arrests, 10 of which were for felonies.

¶ 35 The statute requires the Board to affirm a law enforcement objection if, by a preponderance of the evidence, it finds that the applicant poses a danger to himself or herself or others, or is a threat to public safety. 430 ILCS 66/20(g) (West 2014). "Illinois believes that a Concealed Carry Board staffed by people with experience in law enforcement (including the experience of being a federal judge) will do a better job predicting which applicants would

threaten public safety if armed in public; the Constitution permits it to follow that path." *Berron v. Illinois Concealed Carry Licensing Review Board*, 825 F.3d 843, 849 (7th Cir. 2016). ("Lower federal court decisions are not binding on Illinois courts, but may be considered persuasive authority." *Wilson v. County of Cook*, 2012 IL 112026, ¶ 30.)

¶ 36 In a footnote, Baskin complains that the Board's use of the term "reasonable suspicion" was vague and confusing. Baskin cites *Terry v. Ohio*, 392 U.S. 1 (1968), a criminal case involving reasonable suspicion in investigatory stops by police. Baskin mischaracterizes the context of his case as criminal as opposed to civil, and, further, less precision in statutory language in civil penalties does not raise constitutional difficulties "because the consequences of imprecision are more severe" in criminal cases. See *Wilson*, 2012 IL 112026, ¶ 23.

¶ 37 Moreover, Baskin's footnote citation to *McDonald v. Chicago*, 561 U.S. 742 (2010), for the proposition that "[t]he mere assertion of arrest and possible false narrative law enforcement reports without contradiction does not warrant the denial of the second amendment right of the appellant to lawfully possess a weapon." His reference is misplaced. In *District of Columbia v. Heller*, the Supreme Court stated that only "law-abiding" citizens enjoy these rights, even at home. *Heller*, 554 U.S. 570, 626-628 (2008). The State's licensing power follows from *Heller*'s qualification. See *Berron*, 825 F.3d 843, 847 (7th Cir. 2016) (upholding Illinois' concealed-carry licensure requirement against second-amendment challenge: "If the state may set substantive requirements for [gun] ownership, which *Heller* says it may, then it may use a licensing system to enforce them.").

¶ 38 An analogous factual scenario presented itself in *Jankovich*. There, this court held the applicant for a concealed carry license had clear notice that State Police would run a background check on him, and that other law enforcement agencies would have the opportunity to object to

his application and provide the basis of their objections to the State Police and the Concealed Carry Licensing Review Board. *Jankovich*, 2017 IL App (1st) 160706, ¶ 92. The applicant further had notice that, after consideration of objections, if he was deemed to pose a threat to himself or others or a threat to public safety, his application would be denied. *Id*. ¶ 93. The applicant had been arrested 18 times, with alleged past conduct involving beatings with brass knuckles and threats to maim and kill victims. *Id*. Although these arrests differ in terms of gravity, the case is instructive on the issue.

¶ 39 Baskin's arrest record establishes a pattern of behavior that supports the Board's decision. Under the lesser standard of a preponderance of the evidence, not the higher burden of reasonable doubt (*Perez*, 2016 IL App (1st) 152087, ¶ 22), the Board's determination was proper.

¶ 40 Affirmed.