

No. 1-11-0956

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(e)(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.)	No. 10 CR 1208
)	
ARNELL WARD,)	Honorable
)	Michael Brown,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Quinn and Connors concurred in the judgment.

ORDER

¶ 1 *Held:* Armed habitual criminal conviction affirmed over second amendment challenge to its constitutionality.

¶ 2 Following a bench trial, defendant Arnell Ward was found guilty of violating the armed habitual criminal statute (720 ILCS 5/24-1.7(a) (West 2008)), and sentenced to six years' imprisonment. On appeal, defendant does not challenge the sufficiency of the evidence or that he had prior felony convictions. Instead, he solely contends that his conviction should be reversed

because the armed habitual criminal statute violates his second amendment right to bear arms for self-defense. We affirm.

¶ 3 The record shows that on December 10, 2009, police executed a search warrant at 5045 South Winchester Avenue in Chicago and recovered a handgun loaded with 10 live rounds of ammunition, a scale, one clear zip lock bag containing cannabis, 4 live rounds, and 2.4 grams of cocaine. Defendant, who was sitting at his dining room table when police entered, was subsequently charged with one count of being an armed habitual criminal, two counts of unlawful use of a weapon by a felon, and one count of possession of a controlled substance (cocaine). After a trial, defendant was found guilty on all counts. At sentencing, the court merged all the counts into his armed habitual criminal conviction and sentenced him to six years' imprisonment.

¶ 4 Defendant now contends on appeal that his conviction should be reversed because the armed habitual criminal statute violates his second amendment right to bear arms for self-defense in that it criminalizes the mere possession of firearms by certain felons. He thus requests this court to declare the statute unconstitutional both facially and as applied to him.

¶ 5 Defendant acknowledges that he did not raise this issue in the trial court. Nevertheless, a challenge to the constitutionality of a criminal statute may be raised at any time and is subject to *de novo* review. *People v. Coleman*, 409 Ill. App. 3d 869, 877 (2011). We observe that the intermediate scrutiny standard has been adopted as the proper standard to be applied to second amendment challenges. *People v. Ross*, 407 Ill. App. 3d 931, 939 (2011). That said, we begin our analysis with the presumption that the statute is constitutional, and "the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." (Internal quotation marks omitted.) *Coleman*, 409 Ill. App. 3d at 877, quoting *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 6 Defendant's challenge to the armed habitual criminal statute stems from the decisions of the United States Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, ___ U.S. ___, 130 S. Ct. 3020 (2010). In *Heller*, 554 U.S. at 628, 635, the Supreme Court held that the second amendment protects the right to possess a handgun in the home for self-defense and struck down a District of Columbia ordinance that completely banned handgun possession in the home and required that any lawful firearm in the home always be disassembled or bound by a trigger lock. In *McDonald*, ___ U.S. at ___, 130 S. Ct. at 3050, the Supreme Court held that the due process clause of the fourteenth amendment incorporated the second amendment right recognized in *Heller*.

¶ 7 Based on these decisions, defendant maintains that his mere possession of a handgun is conduct protected at the very core of the second amendment, conduct that the amendment "elevates above all other interests." *Heller*, 554 U.S. at 635. Accordingly, he argues, the armed habitual criminal statute, which criminalizes the possession of firearms by a twice-convicted felon, such as himself, is an unconstitutional infringement on his right to bear arms for self-defense.

¶ 8 This court has previously considered and rejected similar constitutional challenges to the armed habitual criminal statute based on *Heller* and *McDonald*. We concluded that "the armed habitual criminal statute is a constitutionally permissible restriction of the right to bear arms, as a valid exercise of government's right to protect the health, safety, and general welfare of its citizens. The restriction serves a substantial governmental interest and is proportional to the interest served." *Ross*, 407 Ill. App. 3d at 942. Moreover, in *Coleman*, this court found its analysis in *Ross* to be well reasoned and adopted the conclusion therein upholding the constitutionality of the armed habitual criminal statute. *Coleman*, 409 Ill. App. 3d at 879; *People v. Black*, 2012 IL App (1st) 110055, ¶ 13 (agreed with *Ross*); see also *People v. Robinson*, 2011

IL App (1st) 100078, ¶ 26 (the mere fact that the gun defendant possessed was recovered from inside his home did not warrant departing from this court's previous decisions finding the aggravated unlawful use of a weapon by a felon and unlawful use of a weapon criminal statutes constitutional).

¶ 9 We find that the same conclusion obtains here. The Supreme Court has never suggested that a felon can possess a firearm inside or outside a home; and the majority in *Heller* stated that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Ross*, 407 Ill. App. 3d at 939, quoting *Heller*, 554 U.S. at 626-27.

¶ 10 Defendant acknowledges that *McDonald* repeats that *dicta*, but argues that it should not be followed. We are unpersuaded by his reasoning that there do not appear to be any long-standing laws prohibiting persons with a criminal background from possessing firearms, and that there is no textual basis in the Constitution for withholding the right to bear arms from persons with criminal backgrounds. We also observe that judicial *dicta* should usually carry dispositive weight in an inferior court. *Black*, ¶ 14; *People v. Davis*, 408 Ill. App. 3d 747, 750 (2011). Additionally, we find *People v. Dawson*, 403 Ill. App. 3d 499 (2010) (overturned in part on unrelated grounds) and *People v. Williams*, 405 Ill. App. 3d 958 (2010) (vacated for reconsideration in light of *People v. Marshall*, 242 Ill. 2d 285 (2011)), relied on by defendant to argue that the *dicta* contained in *Heller* and *McDonald* was not to be given weight, actually supports our decision. In those cases, this court found that a similar statute, the aggravated unlawful use of a weapon statute, was constitutional even after the decisions in *Heller* and *McDonald*. *Dawson*, 403 Ill. App. 3d at 510; *Williams*, 405 Ill. App. 3d at 963. We therefore

find that defendant's facial challenge to the armed habitual criminal statute fails. *Coleman*, 409 Ill. App. 3d at 879.

¶ 11 We are also unpersuaded by defendant's reliance on *De Jonge v. Oregon*, 299 U.S. 353 (1937), as support for his claim that he "was convicted and sentenced, not for abusing an enumerated right, but simply for exercising that right." *De Jonge* involved a defendant who was charged and convicted of assisting in a Communist Party meeting, violating the fundamental right to peaceable assembly. *De Jonge*, 299 U.S. at 362. The Supreme Court held that the right of peaceable assembly is analogous to those of free speech and free press and the Oregon criminal syndicalism statute was unconstitutional as applied to defendant, who was entitled to take part in a peaceable assembly having a lawful purpose, without incitement to violence or crime. *De Jonge*, 299 U.S. at 364-65. The Supreme Court, however, has not recognized a fundamental right to possess firearms for self-defense to convicted felons. Thus, we find *De Jonge* distinguishable from the case at bar. As a result, defendant's claim that the armed habitual criminal statute is unconstitutional, as applied to him, fails.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 13 Affirmed.