

No. 1-14-3546

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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. 13 CR 863
	)	
KEVIN STRAUGHTER,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE ROCHFORD delivered the judgment of the court.  
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We affirm defendant's conviction of being an armed habitual criminal where the statute by which he was convicted is not facially unconstitutional.
- ¶ 2 Following a bench trial, defendant Kevin Straughter was convicted of unlawful use or possession of a weapon by a felon (UUWF) under 720 ILCS 5/24-1 (West 2012), and armed habitual criminal (AHC) under 720 ILCS 5/24-1.7 (West 2012), and was sentenced to six years' imprisonment. On appeal, defendant argues that section 5/24-1.7 of the Criminal Code of 2012 (AHC statute) is facially unconstitutional because it criminalizes both the lawful and unlawful possession of firearms. We affirm.

¶ 3 Defendant's charges arose from an incident that occurred in Chicago on December 16, 2012. At trial, a Chicago police officer testified that, on the night of the incident, he observed defendant in an alley near Chicago Avenue and Lavergne Street, "fidgeting" with the left side of his waist. Another officer pursued defendant through the alley, and defendant discarded a firearm and entered a building. The police recovered the firearm and arrested defendant. The State entered into evidence certified copies of defendant's 2007 conviction for felony possession of a controlled substance with intent to deliver and his 2008 conviction for robbery. The trial court found defendant guilty of AHC and UUWF, and imposed a sentence of six years' imprisonment.

¶ 4 On appeal, defendant contends that the AHC statute violates due process and is facially unconstitutional because it punishes possession of a firearm regardless of whether the offender possesses a Firearm Owners Identification (FOID) card. According to defendant, possession of a firearm is unlawful only if an individual lacks a FOID card. Because it is possible that, under the FOID Card Act (430 ILCS 65/1 *et seq.* (West 2010)), an applicant might obtain a FOID card, despite having predicate convictions under the AHC statute, defendant reasons that the AHC statute criminalizes both the lawful and unlawful possession of firearms. Consequently, he maintains that the offense of AHC neither requires a culpable mental state, nor describes a criminal act and, therefore, does not rationally serve the purpose of punishing recidivist offenders for committing firearm crimes.

¶ 5 As an initial matter, we observe that defendant did not raise this constitutional challenge in the trial court. Nonetheless, we may consider his argument because a constitutional challenge to a criminal statute may be raised for the first time on direct appeal. *See In re J.W.*, 204 Ill. 2d 50, 61-62 (2003).

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¶ 6 This court reviews a statute's constitutionality *de novo*, as it presents a question of law. *People v. Schweih*s, 2015 IL 117789, ¶ 10. A "strong presumption" exists in favor of a statute's constitutionality, and "the party challenging its constitutionality bears the burden of clearly establishing that the statute violates the constitution." *People v. Clark*, 2014 IL 115776, ¶ 9. A reviewing court must "construe a statute in a manner that upholds its constitutionality, if reasonably possible." *Id.*

¶ 7 In this case, defendant raises a facial constitutional challenge to the AHC statute, which requires that he show the statute is unconstitutional under any set of facts. *People v. Thompson*, 2015 IL 118151, ¶ 36. However, the fact that a statute is invalid "in one particular set of circumstances," does not establish that the statute is facially invalid. *In re M.T.*, 221 Ill. 2d 517, 536-37 (2006). Rather, "so long as there exists a situation in which a statute could be validly applied, a facial challenge must fail." *Hill v. Cowan*, 202 Ill. 2d 151, 157 (2002).

¶ 8 When a statute "does not affect a fundamental constitutional right," we determine its constitutionality using the "highly deferential rational basis test." *People v. Madrigal*, 241 Ill. 2d 463, 466 (2011). Under the rational basis test, a statute will be upheld "so long as it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable." *People v. Hollins*, 2012 IL 112754, ¶ 15. The legislature has "wide discretion" to determine penalties for criminal offenses, "but this discretion is limited by the constitutional guarantee of substantive due process, which provides that a person may not be deprived of liberty without due process of law." *Madrigal*, 241 Ill. 2d at 466. A statute violates due process "if it potentially subjects wholly innocent conduct to criminal penalty without requiring a culpable mental state beyond mere knowledge." *Id.* at 467. In that situation, the statute "fails the rational basis test because it does not represent a reasonable method of preventing the targeted conduct." *Id.* at 468.

¶ 9 An individual commits the Class X offense of AHC when he or she possesses a firearm and has two prior convictions for enumerated felony offenses, including, in relevant part, forcible felonies and "any violation of the Illinois Controlled Substances Act \*\*\* that is punishable as a Class 3 felony or higher." 720 ILCS 5/24-1.7(a)(1), (3) (West 2012). Here, defendant's conviction for robbery qualifies as a forcible felony (720 ILCS 5/2-8 (West 2012)), and his conviction for possession with intent to deliver one gram or more, but less than 15 grams of cocaine qualifies as a Class 1 felony (720 ILCS 570/401(c)(2) (West 2010)).

¶ 10 Under the FOID Card Act, a person convicted of a felony may have his or her FOID card revoked and seized, or the application for a FOID card denied. Pub. Act. 97-813, § 570 (eff. July 13, 2012) (amending 430 ILCS 65/8(c) (West 2010)).<sup>1</sup> However, the version of section 10(c) of the FOID Card Act that was in effect at the time of the instant offense provides that a circuit court may grant a FOID card applicant relief where the applicant demonstrates that: (1) the applicant has not been convicted of a forcible felony within the 20 years of the application for a FOID card, or at least 20 years have passed since the end of any sentence related to such a conviction; (2) in light of his criminal history and reputation, an applicant "will not be likely to act in a manner dangerous to public safety;" and (3) a grant of relief is not contrary to the public interest. 430 ILCS 65/10(c) (West 2010).

¶ 11 In this case, defendant has not demonstrated that the AHC statute is facially unconstitutional. Initially, we observe that defendant's convictions from 2007 and 2008 for possession with intent to deliver one gram or more but less than 15 grams of cocaine and robbery

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<sup>1</sup> The FOID Card Act was amended in 2013 to prohibit a circuit court from granting a FOID card to anyone prohibited from possessing a firearm under federal law. See Pub. Act 98-63, § 150 (eff. July 9, 2013) (amending 430 ILCS 65/8(c) (West 2010)). This amendment is inapplicable in the case at bar, as it was not in effect when defendant committed the instant offense.

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served as qualifying offenses for his AHC conviction (720 ILCS 5/24-1.7(a)(1), (3) (West 2012)), but also rendered him ineligible to obtain a FOID card. Pub. Act. 97-813, § 570 (eff. July 13, 2012) (amending 430 ILCS 65/8(c) (West 2010)). Thus, even if this court were to agree with defendant's theory that possessing a firearm is unlawful only where an offender lacks a FOID card, here, defendant lacked a FOID card and could not have obtained one. Consequently, the AHC statute was properly applied and no constitutional violation occurred. See *In re C.E.*, 161 Ill. 2d 200, 219 (1994) (a defendant's facial challenge fails if the statute is constitutional as applied to him).

¶ 12 In both *People v. Johnson*, 2015 IL App (1st) 133663, and *People v. Fulton*, 2016 IL App (1st) 141765, this court rejected the same facial constitutional challenge that defendant argues in this appeal. We held:

" 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. [Citation.] The armed habitual criminal statute was enacted to help protect the public from the threat of violence that arises when repeat offenders possess firearms. [Citation.] The Supreme Court explicitly noted in *District of Columbia v. Heller*, 554 U.S. 570[, 626, 128 S.Ct. 2783, 171 L.Ed.2d 637] (2008), that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons." [Citation.] \* \* \* Accordingly, we find that the potential invalidity of the armed habitual criminal statute in one very unlikely set of circumstances does not render the statute unconstitutional on its

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face.' " *Fulton*, 2016 IL App (1st) 141765, ¶ 23 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27).

¶ 13 Moreover, this court has rejected defendant's contention that the AHC statute lacks a rational basis. As we explained in *Johnson* and *Fulton*, the AHC statute is not overbroad, but precisely defines the activity that it seeks to punish. We held that "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.' " *Id.* ¶ 31 (quoting *Johnson*, 2015 IL App (1st) 133663, ¶ 27).

¶ 14 Thus, the instant case is distinguishable from decisions cited by defendant, where our supreme court invalidated statutes that criminalized conduct that was not necessarily criminal in nature. In *Madrigal*, for example, the court invalidated an identity theft statute that would prohibit using a neighbor's identification information to check his performance in a marathon. *Madrigal*, 241 Ill. 2d at 472, 479. Likewise, in *People v. Carpenter*, 228 Ill. 2d 250 (2008), the court overturned a statute that penalized possession of vehicles containing compartments for concealing items from law enforcement, as the intent to conceal is not necessarily unlawful. *Id.* at 269, 273; see also *People v. Zaremba*, 158 Ill. 2d 36, 38-39 (1994) (antifencing statute rendered evidence technicians culpable for accepting stolen goods recovered by police officers); *People v. Wright*, 194 Ill. 2d 1, 28 (2000) (statute prohibiting knowing failure to maintain vehicle records criminalized lapses due to innocent reasons); *People v. Wick*, 107 Ill. 2d 62, 66 (1985) (aggravated arson statute punished lawful and unlawful conduct by not requiring an unlawful purpose for setting fire). Unlike the statutes involved in these cases, the AHC statute does not

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punish lawful activity or lack a rational basis. *Fulton*, 2016 IL App (1st) 141765, ¶ 31; *Johnson*, 2015 IL App (1st) 133663, ¶ 27. Additionally, as our supreme court has explained, a culpable mental state is not required where, by statutory definition, a proscribed act (here, possession of a firearm by an individual with two qualifying felony convictions) is criminal in nature. *People v. Williams*, 235 Ill. 2d 178, 210 (2009). Thus, following our decisions in *Johnson* and *Fulton*, we hold that the AHC statute is not unconstitutional.

¶ 15 Notwithstanding, defendant maintains that *Coram v. State*, 2013 IL 113867, established a constitutional guarantee for "individualized consideration" of whether a person may legally possess a firearm. In *Coram*, the Illinois State Police denied the applicant's FOID card application on the basis that, under federal law, a prior misdemeanor domestic battery conviction barred him from possessing a firearm. *Id.* ¶ 8. Our supreme court determined that, under the version of the FOID Card Act in effect when the applicant applied for his FOID card, nothing prevented the trial court from granting relief from the federal firearm disability. *Id.* ¶ 8-9. Consistent with the guarantee of the Illinois Constitution to "the right of the individual citizen to keep and bear arms" (Ill. Const. 1970, art. 1, § 22), our supreme court found that the FOID Card Act mandated "individual assessment of a person's application and circumstances by the *Department of State Police* in the first instance, and individualized *judicial* consideration of the basis for denial of a FOID card." (Emphasis in original.) (*Coram*, 2013 IL 113867, ¶ 58).

¶ 16 *Coram* is inapposite to the case at bar, as it considered individualized review in the context of a federal firearm prohibition and did not consider whether Illinois law permits circuit courts to countermand a state-imposed firearm prohibition against felons. Moreover, *Coram* did not address the constitutionality of that prohibition in the context of the AHC statute.

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Consequently, *Coram* is inapplicable to the instant case and defendant's constitutional challenge to the AHC statute fails.

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

¶ 18 Affirmed.