2026 IL App (1st) 242025-U
No. 1-24-2025
Order filed November 25, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT, THIRD DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

WAYNE MOBLEY, Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable Steven Jay Rosenblum, Judge, Presiding.
No. 21-CR-2766

PRESIDING JUSTICE QUISH delivered the judgment of the court.
Justices Lampkin and Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for armed robbery with a firearm and armed habitual criminal are affirmed where trial counsel was not ineffective and the armed habitual criminal statute is not facially unconstitutional.

¶ 2 Following a jury trial, defendant Wayne Mobley was convicted of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2020)) and armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2020)) and sentenced to concurrent terms of 25 years' imprisonment. The armed robbery sentence included a 15-year firearm enhancement (720 ILCS 5/18-2(b) (West 2020)). On appeal, defendant contends that his trial counsel was ineffective for objecting to a jury instruction that would have precluded the jury from considering defendant's prior convictions as evidence of his guilt. Defendant also contends that the armed habitual criminal statute is facially unconstitutional

under the second amendment of the United States Constitution and the United States Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 At trial, Jesal Dave testified that, at about 1:38 a.m. on January 31, 2021, he was working alone at a 7-Eleven store and gas station on East Ogden Avenue in LaGrange, Illinois, when defendant entered the store. Defendant, whom Dave identified in court, wore a winter coat with a fur-lined hood that covered the top of his head and a black mask. Defendant purchased Tic Taks, coffee, and blueberry donuts. Dave placed the donuts and Tic Tacs inside a bag. Defendant then stated that he wanted an item from the deli and ran to the deli section at the back of the store. No other customers were inside the store at the time.

¶ 5 Dave opened the cash register to transfer two $20 bills into the slot of the safe located below the register. Defendant then came behind the counter, pointed a black metallic revolver at Dave, and told Dave not to move. Defendant held the firearm in his right hand with his arm raised to his mid-section. Defendant told Dave to open the cash register and Dave complied. Defendant removed money from the register and took the two $20 bills that were hanging from the slot of the safe. Defendant placed the money inside his left coat pocket.

¶ 6 Defendant demanded Dave's phone, which was charging on the back counter. Dave begged defendant not to take his phone. Defendant told Dave to get down on his knees, and Dave did. Defendant slowly backed away and walked to the front of the counter. Defendant continued pointing the gun at Dave and demanded two packs of cigarettes. Dave handed defendant two packs of Newport cigarettes. Defendant then told Dave to go in the back room behind the cash register and stay there. Dave did so, then exited the room when he heard the door chime.

¶ 7 Dave called 911 and locked the door. While on the phone, Dave observed defendant starting a white sedan in the parking lot. It was snowing and about two inches of snow had accumulated. Defendant struggled to drive out of the lot, and after multiple attempts, turned right onto Ogden. Dave told the police which direction defendant drove.

¶ 8 The State introduced several surveillance video clips from various angles inside the store that were published during Dave's testimony and included in the record on appeal. The videos have no audio. Dave identified defendant's vehicle parked at a gas pump. The videos showed defendant entering the store at 1:38 a.m. Dave identified defendant in the videos wearing a winter coat with a fur-lined hood over his head.

¶ 9 This court viewed the videos. The videos show that, at 1:43 a.m., after other customers left, defendant approached the cash register and purchased his items with cash. Defendant walked to the back of the store and out of view, and a minute later, returned in view, walked behind the counter, and approached Dave. Defendant grabbed money hanging from the slot in the safe, from Dave's hand, and from the cash register and placed it inside his left coat pocket. An object shaped like a firearm, pointed at Dave, is clearly visible in defendant's right hand throughout the incident.

¶ 10 Next, defendant grabbed his bag of items from the counter and walked backwards from behind the counter as Dave squatted down to the floor. Defendant returned to the front of the counter and placed a sandwich inside his bag. Dave handed defendant two packs of Newport cigarettes, which defendant placed inside his bag. Defendant motioned to the right with his right hand holding the firearm, and Dave walked out of view behind the counter. At 1:46 a.m., Dave returned into view and made a phone call.

¶ 11 Dave further testified that when defendant was behind the counter, he slightly lowered his mask and Dave saw defendant's face. Dave also testified that the video showed defendant walking

to his vehicle in the parking lot at 1:46 a.m. The State published several photographs. Dave testified that multiple photographs depicted defendant holding a firearm in his right hand.

¶ 12 The police asked Dave to reprint the receipt from defendant's purchase, which was introduced into evidence. The receipt listed the items defendant purchased and showed the transaction occurred at 1:43 a.m. Dave also identified photographs of defendant's coat, a 7-Eleven bag containing the items defendant purchased, and the cigarettes and sandwich defendant took.

¶ 13 About 15 minutes after the robbery, the police drove Dave to a location on the side of a road where Dave identified defendant in a show-up. Defendant was wearing the same jacket and pants he wore during the robbery. Dave also identified defendant's vehicle.

¶ 14 On cross-examination, Dave acknowledged that when he observed defendant walking to his vehicle after the robbery, Dave did not see defendant throw or discard any items. Dave did not see any items thrown from the vehicle as defendant drove away.

¶ 15 LaGrange Police Officer Scott Wolf testified that about 1:45 a.m. on January 31, 2021, he received a radio dispatch reporting an armed robbery possibly still in progress at the 7-Eleven on Ogden. Wolf received a description of the offender and was told the vehicle involved was a silver sedan with a yellow rear license plate. On Ogden, three or four blocks from the 7-Eleven, Wolf observed a silver Buick sedan driving towards him. Wolf joined another police vehicle in pursuit of the Buick, which turned northbound onto LaGrange Road. Wolf activated his emergency lights and siren, but the Buick, which was traveling about 60 miles per hour in a 35-mile-per-hour zone, did not stop.

¶ 16 After about two miles, the Buick crashed into a guardrail and stopped. Wolf approached the driver's side of the Buick and observed defendant alone in the vehicle, in the driver's seat and raising his hands. Defendant was wearing a black coat with a fur-lined hood. The passenger-side

window was completely rolled down. Wolf ordered defendant to exit the Buick and handcuffed him.

¶ 17 While searching defendant for a firearm, Wolf observed a large amount of money protruding from defendant's left coat pocket. On the bench seat inside the Buick, next to the driver's area, Wolf observed a 7-Eleven bag containing two packs of Newport cigarettes, a sandwich, donuts, and Tic Tacs. In photographs published by the State, Wolf identified the Buick, defendant's coat, and the 7-Eleven bag on the front seat. The police conducted an extensive search of the path taken by the Buick during the pursuit but were unable to locate a firearm. Their search was impeded by heavy snow, unplowed streets, and "huge piles of snow" on the roadsides.

¶ 18 The State published a video of the pursuit of the Buick taken from Wolf's dashboard camera. The video, included in the record on appeal and viewed by this court, comports with Wolf's testimony. The State also presented a document from the Illinois Secretary of State's Office indicating the temporary license plate on the Buick was registered to defendant.

¶ 19 On cross-examination, Wolf testified that he never lost sight of the Buick during the pursuit, but he "could not" have seen an object being thrown from the vehicle.

¶ 20 The State presented a stipulation that the police searched defendant's vehicle and path of travel and were unable to find a firearm. The State presented a second stipulation stating, "defendant has previously been convicted of two qualifying offenses."

¶ 21 Defendant moved for a directed verdict, arguing that the State failed to present sufficient evidence that he was armed with a firearm. In denying the motion, the trial court viewed still-frame photographs taken from the video inside the 7-Eleven, observed a "small dark, revolver-type weapon" in defendant's right hand, and stated that the jury must decide the nature of the object.

¶ 22 During the jury instruction conference, the State offered Illinois Pattern Jury Instruction, Criminal, No. 3.13X (approved Oct. 17, 2014) (hereinafter IPI Criminal No. 3.13X). The instruction states, in relevant part:

> "Ordinarily, evidence of a defendant's prior conviction of an offense may not be considered by you as evidence of his guilt of the offense with which he is charged.
>
> However, in this case, because the State must prove beyond a reasonable doubt the proposition that the defendant has previously been convicted of [two qualifying offenses], you may consider evidence of defendant's prior conviction of [two qualifying offenses] only for the purpose of determining whether the State has proved that proposition."

¶ 23 Defense counsel objected to the instruction, stating, "I don't believe it's necessary because I believe it's all contained within 16 and 15 and also the stipulations." The prosecutor responded that the instruction was necessary to preclude jurors from considering defendant's prior convictions for other purposes. Defense counsel replied, "I'm concerned about the spillover [e]ffect," positing that "the way [it's] worded *** may affect the [jury's] deliberation with respect to the other charge."

¶ 24 The trial court stated that the committee note for the instruction provided: "[i]f the defendant does not testify at his trial, this instruction should be given only at the defendant's request." See IPI Criminal No. 3.13X, Committee Note. Defense counsel stated that he did not want the instruction given. The court then refused the instruction.

¶ 25 The jury found defendant guilty of armed robbery and armed habitual criminal. The trial court imposed concurrent terms of 25 years' imprisonment, which included a 15-year firearm enhancement for the armed robbery offense.

¶ 26 Defendant filed a timely *pro se* motion to reduce his sentence that also argued that the armed habitual criminal statute was unconstitutional under the single subject rule and proportionate penalties clause of the Illinois Constitution. The trial court appointed new counsel to represent defendant on his motion.

¶ 27 At the hearing, new counsel argued that the armed habitual criminal statute was unconstitutional under *Bruen*. The court stated that no court had found the armed habitual criminal statute unconstitutional under *Bruen*. The court further noted that defendant's sentence was barely over the minimum and denied his motion to reduce his sentence. Defendant appeals.

¶ 28 II. ANALYSIS

¶ 29 On appeal, defendant first contends that his trial counsel was ineffective for objecting to jury instruction IPI Criminal No. 3.13X, which would have precluded the jury from considering defendant's prior convictions as evidence of his guilt. Defendant argues that the purpose of the instruction is to prevent a "spillover effect," which was the basis for counsel's objection; therefore, the objection was "illogical" and allowed the jury to consider the prior convictions as propensity evidence. Defendant claims he was prejudiced by counsel's objection because the evidence of whether defendant was armed with a firearm was closely balanced, with only Dave's testimony and a "grainy" surveillance video. Thus, according to defendant, counsel's act allowed the jury to find that defendant likely possessed a firearm because he was a convicted felon, and "reasonably could have tipped the scales" against him.

¶ 30 Claims of ineffective assistance of counsel are evaluated under the test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Veach*, 2017 IL 120649, ¶ 29. To support a claim of ineffective assistance, defendant must demonstrate that counsel's representation was deficient and, as a result, defendant suffered prejudice.

Strickland, 466 U.S. at 687. Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is a reasonable probability that the outcome of the proceeding would have been different if not for counsel's error. *Veach*, 2017 IL 120649, ¶ 30.

¶ 31 Counsel's choice of jury instructions is presumed to be a matter of sound trial strategy that is generally immune from claims of ineffective assistance. *People v. Smith*, 2025 IL App (1st) 220116, ¶ 34. If defendant cannot prove that he suffered prejudice, this court need not determine whether counsel's performance was deficient. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). Moreover, *Strickland* requires defendant to demonstrate actual prejudice; mere speculation is not sufficient. *People v. Bew*, 228 Ill. 2d 122, 135-36 (2008) (collecting cases).

¶ 32 In this case, defendant suffered no prejudice from counsel's decision to object to the limiting jury instruction where the evidence against defendant was overwhelming. Dave testified that defendant purchased Tic Tacs, coffee, and donuts, then went to the back of the store for a deli item. Moments later, defendant came behind the counter, pointed a firearm at Dave, and told him to open the cash register. Dave testified that defendant took money from the register and money that was hanging from the drop slot of the safe and placed it inside his left coat pocket. Defendant then ordered Dave to his knees, slowly backed away, returned to the front of the counter, and demanded two packs of cigarettes. Dave testified that defendant placed the cigarettes and a sandwich inside the bag with the other items. Defendant then told Dave to go inside the back room and stay there.

¶ 33 Surveillance video from several angles inside the store corroborated Dave's testimony. Contrary to defendant's assertion, the video is not "grainy." Instead, the video clearly depicts the entire incident and shows defendant holding a firearm in his right hand pointed at Dave throughout the robbery.

¶ 34 Dave further testified that he saw defendant's face while defendant was standing next to him at the cash register. Dave identified defendant in a show-up 15 minutes after the robbery and identified him in court.

¶ 35 In addition, Officer Wolf testified that, shortly after receiving the report of the armed robbery, he observed defendant's vehicle three or four blocks from the 7-Eleven. Wolf activated his emergency lights and siren, but defendant did not stay, and led police on a two-mile pursuit, speeding 60 miles per hour in a 35-mile-per-hour zone during a snowstorm. Defendant only stopped when he crashed into a guardrail. Wolf observed a large amount of money protruding from defendant's left coat pocket. Wolf also saw a 7-Eleven bag on the front seat containing the items defendant purchased, the sandwich he took, and the Newport cigarettes he ordered Dave to give him. Though the firearm was never recovered, Wolf explained that the passenger window of defendant's vehicle was completely rolled down, and that he "could not" have seen an object being thrown from the vehicle during the pursuit, which occurred during a snowstorm.

¶ 36 Based on this record, we cannot find a reasonable probability that the jury's verdict would have been different had counsel not objected to IPI Criminal No. 3.13X. See *Veach*, 2017 IL 120649, ¶ 30. Because defendant suffered no prejudice, he fails to establish ineffective assistance, and we need not address whether counsel's performance was deficient. See *Givens*, 237 Ill. 2d at 331.

¶ 37 Defendant next contends that the armed habitual criminal statute is facially unconstitutional under the second amendment of the United States Constitution (U.S. Const., amend II) and *Bruen*. Defendant acknowledges that this court has upheld the constitutionality of the statute in response to the same argument he presents here, but disagrees with our prior holdings.

¶ 38 Whether the statute is constitutional is a question of law which we review *de novo*. *People v. Smith*, 2024 IL App (1st) 221455, ¶ 9 (citing *People v. Davis*, 2014 IL 115595, ¶ 26).

¶ 39 Defendant was convicted of violating section 24-1.7(a) of the armed habitual criminal statute, which, in relevant part, prohibits a person from possessing a firearm after having been convicted of two or more qualifying offenses. 720 ILCS 5/24-1.7 (West 2020).

¶ 40 A facial constitutional challenge is "the most difficult challenge to mount." *Davis*, 2014 IL 115595, ¶ 25. Statutes are presumed constitutional. *People v. Bochenek*, 2021 IL 125889, ¶ 10. To rebut that presumption and establish that a statute is facially unconstitutional, the party challenging the constitutionality must demonstrate that there are no circumstances under which the statute would be valid. *Id.* "If it is reasonably possible to construe the statute in a way that preserves its constitutionality, we must do so." *Id.*

¶ 41 The second amendment provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const., amend. II. In 2008, the United States Supreme Court issued its decision in *District of Columbia v. Heller*, in which it stated that the second amendment elevated "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). In 2010, the Court extended the right to keep and bear arms to the states under the fourteenth amendment. See *McDonald v. City of Chicago*, 561 U.S. 742 (2010). The Court reiterated that its decision in *Heller* "did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons.'" *Id.* at 786 (quoting *Heller*, 554 U.S. at 626-27).

¶ 42 In 2022, the Supreme Court issued *Bruen*, in which it adopted a new analytical framework for evaluating the constitutionality of firearm regulations. *Smith*, 2024 IL App (1st) 221455, ¶ 12

(citing *Bruen*, 597 U.S. at 17, 24). Under *Bruen*, where the second amendment's plain text covers an individual's conduct, the conduct is presumptively protected. *Id.* (citing *Bruen*, 597 U.S. at 17, 24). To justify the regulation of that conduct, the government must then demonstrate that the regulation "'is consistent with the Nation's historical tradition of firearm regulation.'" *Id.* (quoting *Bruen*, 597 U.S. at 24). To do so, the government must point to historical precedent, focusing on what the founders understood the second amendment to mean. *People v. Brooks*, 2023 IL App (1st) 200435, ¶ 70 (citing *Bruen*, 597 U.S. at 27, 34-35).

¶ 43 Here, defendant claims that the conduct prohibited by the armed habitual criminal statute, possessing a firearm, is covered by the plain text of the second amendment and, therefore, presumptively protected. We disagree.

¶ 44 In *Bruen*, the Supreme Court reiterated that the second amendment does not grant an unrestricted right to carry firearms by all people at all times. Rather,

> "The Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions. *Heller*, 554 U.S. at 581, 128 S. Ct. 2783. Those restrictions, for example, limited the intent for which one could carry arms, the manner by which one carried arms, or the exceptional circumstances under which one could not carry arms, such as before justices of the peace and other government officials." *Id.* at 70.

¶ 45 In *Heller*, *McDonald*, and *Bruen*, the Supreme Court expressly stated that the second amendment protects the rights of "law-abiding citizens." See *Bruen*, 597 U.S. at 8-10 (agreeing that "law-abiding citizens" have a right to carry handguns for self-defense outside the home); see also *Heller*, 554 U.S. at 635 (second amendment elevated "the right of law-abiding, responsible citizens to use arms in defense of hearth and home"); *McDonald*, 561 U.S. at 786 (reiterating that

Heller "did not cast doubt on such longstanding regulatory measures as prohibitions on the possession of firearms by felons" (internal quotation marks omitted)).

¶ 46 Following *Bruen* and *Heller*, Illinois courts have held that the second amendment does not apply to a felon's firearm possession. See, *e.g.*, *People v. Kelley*, 2024 IL App (1st) 230569, ¶ 17 ("[T]he Supreme Court explicitly sanctioned the prohibition on the possession of firearms by felons."); *People v. Daniels*, 2025 IL App (1st) 230823, ¶ 39 (concluding that, "under the first prong of the *Bruen* test, *** the second amendment does not presumptively cover a felon's possession of a firearm" because "felons are outside the box drawn by *Bruen*"); *People v. Gray*, 2025 IL App (1st) 191086-B, ¶ 20 ("[W]e reject the argument that the second amendment extends protection to anyone other than 'law-abiding citizens,' meaning statutes that prohibit felons from possessing firearms, like AHC, generally fall outside of its scope.").

¶ 47 We agree with those prior decisions finding the armed habitual criminal statute facially constitutional, and for the same reasons, we reject defendant's facial challenge to the statute. See *Bochenek*, 2021 IL 125889, ¶ 10 ("A statute will be deemed facially unconstitutional only if there is no set of circumstances under which the statute would be valid.").

¶ 48 Moreover, even if we found under the first step of the *Bruen* framework that the second amendment covers felons, defendant's facial challenge would still fail under the second step of the analysis. As explained in *Brooks*, there is ample historical support for the legislature's ability to prohibit the possession of firearms by twice-convicted felons. *Brooks*, 2023 IL App (1st) 200435, ¶¶ 90-105. The historical analogues included "widespread acceptance of the legislatures' authority to disarm felons" during the founders' era. *Id.* ¶ 96. *Brooks* recognized a "historical tradition of legislatures exercising their discretion to impose status-based restrictions disarming entire

categories of persons" and that "the founders understood that felons were one such group." (Internal quotation marks and citations omitted.) *Id.* ¶ 97.

¶ 49 Accordingly, defendant's facial challenge to the armed habitual criminal statute pursuant to the second amendment and *Bruen* fails.

¶ 50 III. CONCLUSION

¶ 51 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 52 Affirmed.