

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

WHITE COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF)
ILLINOIS)

-vs-)

VIVIAN CLAUDINE BROWN,)

Defendant.)

FILED
OCT 16 2018

No. 2017-CM-60

Kelly H. Sullivan
CIRCUIT COURT
WHITE COUNTY

ORDER DENYING MOTION TO RECONSIDER ORDER
FINDING STATUTE UNCONSTITUTIONAL

On this 16 day of October, 2018, this Court, after examining the State's Motion to Reconsider, the defendant's Response, hearing arguments of counsel and being fully advised in the premises, finds as follows:

1. This Court has jurisdiction of the parties hereto and the subject matter hereof.
2. The Court denies the State's Motion to Reconsider filed herein on March 19, 2018.
3. The Court supplements its ruling of February 2, 2018, as follows:
 - a. To comply with 430 ILCS 65/2(a)(1) a person must have a FOID card on their person when in either actual or constructive possession of a firearm or ammunition. Owning a FOID card is insufficient to comply with the statute. See *People v. Eldens*, 63 Ill.App.3d 554 (Fifth Dist. 1978) and *People v. Cahill*, 37 Ill.App.3d 361 (Second Dist. Second Div. 1976).

A person is in constructive possession of a firearm or ammunition when: (1) The person has knowledge of the presence of a weapon or ammunition, and (2) That person is

in immediate and exclusive control over the area where the firearm or ammunition is located.

Due to the language of 430 ILCS 65/2(a)(1) and the Court's interpretation of the statute, it is clear that compliance is impossible when one is in their own home. No person could have their FOID card on their person 24 hours each and every day when firearms or ammunition are in the house.

In addition, every person in the home (family member, friend, spouse, etc.) who has knowledge of the firearms or ammunition and has immediate and exclusive control of the area where the firearms or ammunition is located, who does not have a FOID card, would be in violation of the statute.

Thus, 430 ILCS 65/2(a)(1) is unconstitutional, as applied to this defendant, because it is impossible to comply in the person's own home. As an alternative, if 430 ILCS 65/2(a)(1) is constitutional then it becomes obvious the legislature did not intend the statute to apply in one's own home due to impossibility of compliance.

4. The Court reiterates its findings and ruling in its previous Order Finding Statute Unconstitutional filed herein on February 14, 2018, that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in her own home. The Court further finds and orders that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in her own home, in violation of the Second Amendment to the United States Constitution, as applied to the States thru the Fourteenth Amendment, and Article I, Section 22 of the Constitution of the State of Illinois, because it is impossible to comply with and that such statute cannot reasonably be construed in a manner that preserve its validity. The Court further finds, in compliance with Supreme Court Rule 18, that the finding of unconstitutionality is necessary to the decision and that such decision cannot rest upon an al-

ternative ground; and that the notice required by Supreme Court Rule 19 has been served and that those served with such notice have been given adequate time and opportunity under the circumstances to defend the statute.

IT IS THEREFORE ORDERED that for the foregoing reasons, and those enumerated in the Order Finding Statute Unconstitutional filed herein on February 14, 2018, that 430 ILCS 65/2(a)(1) is unconstitutional as applied to the defendant in this case, in violation of the Second Amendment to the United States Constitution, as applied to the States thru the Fourteenth Amendment, and Article I, Section 22 of the Constitution of the State of Illinois, and by reason thereof, this cause is dismissed with prejudice.

ENTER: _____

Judge

DATED: _____

10-16-18