

[Cite as *State v. Jones*, 2003-Ohio-1918.]

STATE OF OHIO)	IN THE COURT OF APPEALS
)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT)	

STATE OF OHIO

Appellee

v.

MARVIS K. JONES

Appellant

C.A. No. 21270

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 02-04-0963

DECISION AND JOURNAL ENTRY

Dated: April 16, 2003

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

Per curiam.

{¶1} Marvis Jones, appellant, appeals from the decision of the Summit County Court of Common Pleas. We affirm.

{¶2} On April 22, 2002, Mr. Jones was indicted for one count of carrying a concealed weapon, in violation of R.C. 2923.12, one count of falsification, in violation of R.C. 2921.13(A)(3), and one count of possession of a dangerous ordnance, in violation of R.C. 2923.17(A). On May 20, 2002, Mr. Jones filed a motion to dismiss the charge of carrying a concealed weapon, asserting that the statute is unconstitutional under the Ohio Constitution. The motion to dismiss was denied. Thereafter, Mr. Jones pled no contest to the charges of carrying a concealed weapon and falsification. The remaining charge was dismissed. The trial court found Mr. Jones guilty of the charges of carrying a concealed weapon and falsification and sentenced him accordingly. This appeal followed.

{¶3} Mr. Jones raises one assignment of error:

“THE TRIAL COURT ERRED IN DENYING APPELLANT’S MOTION TO DISMISS THE CHARGE OF CARRYING A CONCEALED WEAPON AS THAT STATUTE IS UNCONSTITUTIONAL.”

{¶4} In his assignment of error, Mr. Jones asserts that R.C. 2923.12 is unconstitutional pursuant to the Ohio Constitution. In support of his argument that the statute prohibiting the carrying of a concealed weapon is unconstitutional, Mr. Jones cites to *Klein v. Leis* (2002), 146 Ohio App.3d 526.¹ In *Klein*, the First District found that R.C. 2923.12 is unconstitutional. *Id* at syllabus.

¹ This case is currently pending before the Ohio Supreme Court. At the time of this opinion, a decision has not been released.

{¶5} Statutes enjoy a strong presumption of constitutionality. *State v. Stallings* (2002), 150 Ohio App.3d 5, 2002-Ohio-5942, at ¶7. “The party challenging the constitutionality of [a] statute bears the burden of proving its constitutional infirmity.” *Id.* Challenged legislation will not be invalidated unless a challenger can establish that the legislation is unconstitutional beyond a reasonable doubt. *Arnold v. Cleveland* (1993), 67 Ohio St.3d 35, 38-39.

{¶6} The Ohio Supreme Court has found that Section 4, Article 1 of the Ohio Constitution confers the fundamental right to bear arms. *Id.* at paragraph two of the syllabus. However, this right is not absolute or unlimited but, rather, “is subject to reasonable regulation.” *Id.* at 46-47.

{¶7} In *Mosher v. Dayton* (1976), 48 Ohio St.2d 243, syllabus, the Ohio Supreme Court found that an ordinance requiring individuals having or acquiring handguns to possess an identification card was a reasonable exercise of the police power. The Ohio Supreme Court noted that:

“In *State v. Nieto* (1920), 101 Ohio St. 409, *** the court found to be constitutional a statute prohibiting the carrying of concealed weapons, stating at page 413, that:

“ *** The statute does not operate as a prohibition against carrying weapons, but as a regulation of the manner of carrying them. The gist of the offense is the concealment. The constitution contains no prohibition against the legislature making such police regulations as may be necessary for the welfare of the public at large as to the manner in which arms shall be borne.” *Id.* at 247.

{¶8} Similarly, this Court has noted that:

“The constitutional right to bear arms has always been subject to reasonable exercises by the state of its police powers. Thus, the state may regulate the manner in which citizens may bear arms; for instance, by prohibiting the carrying of concealed weapons.” *State v. Enos* (Mar. 23, 1977), 9th Dist. No. 8251, citing *Nieto*, 101 Ohio St. at 409.

{¶9} “The notion that there is a personal right to carry concealed weapons that is a fundamental right under the United States and Ohio Constitutions has been repeatedly and emphatically rejected.” *State v. Pauley* (1982), 8 Ohio App.3d 354, 357. Furthermore, at this point in time, there is neither case law of the Ohio Supreme Court or the Ninth District upholding a constitutional challenge to R.C. 2923.12. See *State v. Bachtel*, 5th Dist. 99CA011, 2002-Ohio-2528, at ¶21; see, also, generally, *State v. Ferguson*, 3rd Dist. No. 14-02-14, 2003-Ohio-866, at ¶13.

{¶10} We find that, under the current state of Ohio law, R.C. 2923.12 is a reasonable regulation which regulates only the manner in which weapons may be carried and does not act as a total prohibition on the carrying of weapons. Consequently, this Court cannot find that the statute in question is unconstitutional. Mr. Jones’ assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

LYNN C. SLABY
FOR THE COURT

LYNN C. SLABY, P. J.
CARR, J.

CONCUR

BATCHELDER, J.
DISSENTS, SAYING:

{¶11} I respectfully dissent. The defendant herein was convicted of violating R.C. 2923.12. This statutory section provides, in pertinent part, that: “(A) No person shall knowingly carry or have, concealed on his or her person or concealed ready at hand, any deadly weapon or dangerous ordnance.”

{¶12} The defendant raised as his defense Section 4, Article 1 of the Ohio Constitution which provides that: “[t]he people have the right to bear arms for their defense and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.”

{¶13} It is important to note that the Constitution of the State of Ohio is far clearer as to the right of Ohio citizens than is the Federal Constitution. Clearly, the statute violates the Ohio Constitution. A constitutional “right” which must be raised as an affirmative defense after a felony charge is brought against the citizen is not a right. I would reverse the decision of the trial court.

APPEARANCES:

NICHOLAS SWYRYDENKO, Attorney at Law, Suite 105, 1000 S. Cleveland-Massillon Rd., Akron, Ohio 44333, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney and RICHARD S. KASAY, Assistant Prosecuting Attorney, Summit County Safety Building, 53 University Avenue, 6th Floor, Akron, Ohio 44308, for Appellee.