

IN THE COURT OF APPEALS OF IOWA

No. 2-853 / 12-0675
Filed November 15, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DONOVAN EUGENE GRIMES,
Defendant-Appellant.

Appeal from the Iowa District Court for Jefferson County, Daniel P. Wilson,
Judge.

The defendant appeals his judgment and sentence for possession of a
firearm by a person convicted of domestic violence in violation of Iowa Code
section 724.26(2) (2011). **AFFIRMED.**

Paul A. Miller of Miller Law Office, Fairfield, for appellant.

Thomas J. Miller, Attorney General, Kevin Cmelik, Assistant Attorney
General, Mary Triick, Legal Intern, Timothy W. Dille, County Attorney, and Patrick
J. McAvan, Assistant County Attorney, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Bower, JJ.

VAITHESWARAN, P.J.

Donovan Grimes was convicted of domestic abuse assault in 1994. Sixteen years later, a law enforcement officer discovered several firearms in his home.

The State charged Grimes with possession of a firearm by a person convicted of domestic violence. See Iowa Code § 724.26(2)(a) (2011). The statute, which became effective in 2010, provides in relevant part that a person “who has been convicted of a misdemeanor crime of domestic violence under 18 U.S.C. § 922(g)(9) and who knowingly possesses . . . a firearm . . . is guilty of a class ‘D’ felony.” See *id.* § 724.26(2)(c) (defining “misdemeanor crime of domestic violence” to mean “an assault under section 708.1, subsection 1 or 3”).

Grimes stipulated he owned the firearms but argued section 724.26(2) was unconstitutional. The district court rejected the argument and, following a trial on the minutes, adjudged Grimes guilty of the crime.

On appeal, Grimes reiterates his challenge to the constitutionality of the statute. He asserts the statute violates (1) “substantive due process” and (2) the Ex Post Facto Clauses of the federal and state constitutions. Our review of these constitutional issues is de novo. See *State v. Hernandez-Lopez*, 639 N.W.2d 226, 233 (Iowa 2002).

I. Substantive Due Process

Substantive due process “prevents the government from interfering with ‘rights implicit in the concept of ordered liberty.’” *Id.* at 237 (citations omitted). Grimes asserts the statute interferes with his individual right to keep and bear arms under the Second Amendment to the United States Constitution. See U.S.

Const. Amend. II (“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.”); *District of Columbia v. Heller*, 554 U.S. 570, 622 (2008) (“[T]he Second Amendment confers an individual right to keep and bear arms (though only arms that ‘have some reasonable relationship to the preservation or efficiency of a well regulated militia.’)”; see also *McDonald v. City of Chicago*, 130 S. Ct. 3020, 3050 (2010) (holding Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment right recognized in *Heller*).¹

The Second Amendment right recognized in *Heller*, while deemed fundamental, is not without limits. As the Court there stated, “[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill,” among other prohibitions. *Heller*, 554 U.S. at 626–627.

Based on this limitation, courts faced with constitutional challenges to the comparable federal statute, 18 U.S.C. § 922(g)(9), have generally not applied the strict scrutiny standard of review applicable to fundamental rights, but an intermediate standard. See, e.g., *United States v. Booker*, 644 F.3d 12, 25 (1st Cir. 2011); *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010); *United States v. Reese*, 627 F.3d 792, 802 (10th Cir. 2010); *United States v. Skoien*, 614 F.3d 638, 641 (7th Cir. 2010); cf. *United States v. White*, 593 F.3d 1199,

¹ The district court characterized Grimes’s challenge as an “as applied” challenge to the statute. We agree with this characterization. See *United States v. Skoien*, 614 F.3d 638, 645 (7th Cir. 2010) (“A person to whom a statute properly applies can’t obtain relief based on arguments that a differently situated person might present.”); cf. *United States v. Booker*, 644 F.3d 12, 22 (1st Cir. 2011) (noting challenge to comparable federal statute was “facial in nature”).

1206 (11th Cir. 2010) (without applying any of the scrutiny standards concluding comparable federal statute was “presumptively lawful” and *Heller* did not cast doubt on the constitutionality of the provision). This standard requires a “substantial relationship between the restriction and an important governmental objective.” *Booker*, 644 F.3d at 25. We find these federal opinions persuasive. See *State ex rel. Miller v. Pace*, 677 N.W.2d 761, 767 n.2 (Iowa 2004) (stating where state law is somewhat patterned after federal law, we look to federal decisions for guidance). Accordingly, we will apply the intermediate standard of scrutiny in reviewing the constitutionality of section 724.26(2).

We begin with the governmental objective. The State asserts that “firearms and domestic strife are a potentially deadly combination” and “Congress and the Iowa Legislature have responded to this serious public safety problem by enacting statutes restricting the ability of individuals with a history of domestic violence to possess[] firearms in their homes.” The State cites the Iowa Supreme Court’s ratification of this objective in *State v. Rupp*, 282 N.W.2d 125, 130 (Iowa 1979) (“There is a legitimate interest in minimizing the felonious use of firearms. . . .” (citation omitted)).

Federal courts have characterized similarly-stated goals as important governmental objectives under the intermediate scrutiny standard. See *United States v. Staten*, 666 F.3d 154, 161 (4th Cir. 2011) (finding stated objective of reducing domestic gun violence a substantial governmental objective); *Reese*, 627 F.3d at 802 (stating defendant did not seriously dispute government’s assertion that goal of statute was to keep firearms out of hands of people who had been judicially determined to pose a credible threat to the physical safety of

a family member); *Skoien*, 614 F.3d at 642 (stating “no one doubts that the goal of . . . preventing armed mayhem, is an important governmental objective”). We agree with these characterizations and conclude the restriction in section 724.26(2) furthers an important governmental objective.

We turn to whether the statutory restriction as applied to Grimes is substantially related to the asserted State interest. Grimes does not dispute that he has a domestic abuse assault conviction on his record. The minutes of testimony and attached documents also reveal that, in 2011, he assaulted his stepson, drawing blood and causing a contusion to his stepson’s lip. Following the incident, Grimes was arrested and jailed for simple domestic abuse assault, and he became the subject of a no contact order. When an officer accompanied Grimes to his home to collect his belongings, he found shotguns, rifles, and a revolver in a gun cabinet in the master bedroom.

Grimes fit squarely within the parameters of the statute; his acts of family violence together with his ownership of several guns were precisely the circumstances section 724.26(2) was designed to address. We agree with the district court that section 726.24(2) as applied to Grimes did not interfere with his Second Amendment right to bear arms and, accordingly, did not violate his substantive due process rights.

II. Ex Post Facto Clauses

Grimes next seeks to invalidate section 724.26(2) under the Ex Post Facto Clauses of the federal and state constitutions, which forbid the application of new punitive measures to a previously committed crime. *See State v. Iowa Dist. Ct.*, 759 N.W.2d 793, 796–97 (Iowa 2009). He bases his argument on the fact that

his 1994 domestic violence conviction preceded the 2010 effective date of section 724.26(2). As the district court concluded, his challenge is foreclosed by our supreme court's decision in *State v. Swartz*, 601 N.W.2d 348, 351 (Iowa 1999).

There, the court considered *ex post facto* challenges to what is now subsection 1 of section 724.26, which bans possession of firearms by a felon. *Swartz*, 601 N.W.2d at 350. The court stated that so long as the "actual crime for which a defendant is being sentenced occurred after the effective date of the new statute, there is no *ex post facto* violation." *Id.* at 350 (citation omitted). Because Swartz conceded he possessed a firearm after the effective date of the statute, the court concluded his sentence did not run afoul of the *Ex Post Facto* Clauses even though his status as a felon predated the effective date. *Id.* at 351. The court reasoned that "section 724.26 is intended to regulate a present situation that includes defendant's continuing status as a convicted felon." *Id.*

Grimes's circumstances are no different. He was convicted of domestic violence before the effective date of section 724.26(2) but was found in possession of a firearm after the effective date. *See id.* at 350; *see also United States v. Pfeifer*, 371 F.3d 430, 436 (8th Cir. 2004) (reaching the same conclusion with an *ex post facto* challenge to 18 U.S.C. § 922(g)(9)). Accordingly, there is no *ex post facto* violation under either the federal or state constitutions. *See Swartz*, 601 N.W.2d at 351 (applying same federal analysis to state constitutional claim); *see also State v. DeWitt*, 811 N.W.2d 460, 467 (Iowa 2012) (noting while "we have discretion to consider a different standard under our

state constitution,” we would not do so where neither party suggested a different state analysis should apply or offered any reasons for a separate analysis).

III. Disposition

We affirm Grimes’s judgment and sentence for possession of a firearm by a person convicted of domestic violence.

AFFIRMED.