

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JOSHUA EPPS,
Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D10-1263

STATE OF FLORIDA,

Appellee.

Opinion filed March 2, 2011.

An appeal from the Circuit Court for Duval County.
Elizabeth A. Senterfitt, Judge.

Nancy A. Daniels, Public Defender, and David P. Gauldin, Assistant Public
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Charlie McCoy, Senior Assistant
Attorney General, Tallahassee, for Appellee.

CLARK, J.

Challenging his conviction under section 790.23(1)(a), Florida Statutes, for
possession of a firearm by convicted felon, the appellant contends that the statute
violates his right to bear arms pursuant to the Second Amendment to the United
States Constitution. While acknowledging that the statute has been upheld against

prior constitutional challenges in cases such as Nelson v. State, 195 So. 2d 853 (Fla. 1967), the appellant maintains that the statute will no longer survive scrutiny in light of more recent decisions of the United States Supreme Court in District of Columbia v. Heller, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed. 2d 637 (2008), and McDonald v. City of Chicago, ___ U.S. ___, 130 S.Ct. 3020, 177 L.Ed. 2d 894 (2010). In those cases the Supreme Court ruled that certain enactments in other jurisdictions, which broadly precluded the general populations there from possessing handguns, violated the Second Amendment in connection with the right to keep and use firearms within the home for self-defense. But that is not the circumstance under which the appellant was convicted in the present case. Furthermore, in both Heller and McDonald the Court expressly stated that the rulings in those cases should not be viewed as casting doubt on “prohibitions on the possession of firearms by felons” Heller and McDonald thus do not undermine the Florida rulings in cases such as Nelson, with regard to the constitutionality of section 790.23(1)(a). See also Leon-Estrada v. Secretary, Dep’t of Corrections, 2010 WL 3069475 (M.D. Fla. August 4, 2010). The appellant’s conviction under section 790.23(1)(a) is therefore AFFIRMED.

KAHN and PADOVANO, JJ., CONCUR.