

[Cite as *State v. Glover*, 2015-Ohio-2751.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27307

Appellee

v.

CHRISTINA GLOVER

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 13 11 3139(A)

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 8, 2015

MOORE, Judge.

{¶1} Appellant, Christina Glover, appeals her conviction for carrying a concealed weapon. This Court affirms.

I.

{¶2} During a traffic stop, police found a loaded and operable handgun under Ms. Glover’s purse in the vehicle in which she was a passenger. Ms. Glover was charged with carrying a concealed weapon in violation of R.C. 2923.12(A)(2). She moved to dismiss this indictment, arguing that R.C. 2923.12 violates her right to bear arms under the Second Amendment to the United States Constitution. The trial court denied the motion, and Ms. Glover pleaded no contest to the charge. The trial court sentenced her to a ten-month prison sentence which was suspended on the condition that she complete one year of community control. Ms. Glover appealed.

II.

ASSIGNMENT OF ERROR

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN NOT DISMISSING [MS.] GLOVER'S CHARGE OR CONVICTION OF CARRYING CONCEALED WEAPONS BECAUSE THE CHARGE AND CONVICTION WERE UNCONSTITUTIONAL UNDER THE U.S. CONSTITUTION'S SECOND AMENDMENT AND ART. I, §4 OF THE OHIO CONSTITUTION.

{¶3} Ms. Glover's assignment of error argues that R.C. 2923.12(A)(2) limits her constitutional right to keep and bear arms in violation of the Second Amendment to the United States Constitution and Article I, Section 4 of the Ohio Constitution. We do not agree.

{¶4} The Second Amendment to the United States Constitution 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." Article I, Section 4 of the Ohio Constitution sets forth a similar guarantee: "The 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." The Ohio Supreme Court has distinguished its analysis of claims arising under the Ohio Constitution on the basis that, unlike the U.S. Constitution, Ohio's Constitution guaranteed the right to bear arms to individual citizens. *See generally Arnold v. Cleveland*, 67 Ohio St.3d 35 (1993). "In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups." *Id* at paragraph one of the syllabus. Two recent decisions by the United States Supreme Court have clarified that the Second Amendment is both analogous

to Article I, Section 4 of the Ohio Constitution and applicable to the States. *See District of Columbia v. Heller*, 554 U.S. 570, 595 (2008) (holding that the Second Amendment guarantees the right to keep and bear arms to individuals); *McDonald v. Chicago*, 561 U.S. 742, 750 (2010) (holding that the Second Amendment is fully applicable to the States by application of the Fourteenth Amendment).

{¶5} The precise scope of the Second Amendment guarantee remains in question. *Powell v. Thompkins*, 783 F.3d 332, 348 (1st Cir.2015). Consequently, in *State v. Shover*, 9th Dist. Summit No. 26800, 2014-Ohio-373, this Court assumed, without deciding, that protections described in *Heller* apply outside the home. In *Shover*, this Court considered a Second Amendment challenge to R.C. 2923.16(B), which prohibits transporting or possessing “a loaded firearm in a motor vehicle in such a manner that the firearm is accessible to the operator or any passenger without leaving the vehicle.” The lead opinion assumed, without deciding, that the protections of the Second Amendment extend to motor vehicles. *Shover* at ¶ 13. Having reviewed the development of Second Amendment jurisprudence in *Heller* and *MacDonald*, we turned to the merits of the constitutional challenge, determined the appropriate level of constitutional review to be intermediate scrutiny, and held that R.C. 2923.16(B) is not unconstitutional. *Shover* at ¶ 13-15.

{¶6} Consistent with *Shover*, we need not determine whether the guarantees of the Second Amendment apply in motor vehicles because R.C. 2923.12(A)(2) withstands constitutional scrutiny regardless. The Second Amendment does not guarantee an “unlimited” right to keep and bear arms “whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 626. More specifically, courts have historically considered that “prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.”

Id. Compare Klein v. Leis, 99 Ohio St.3d 537, 2003-Ohio-4779, ¶ 15 (applying a reasonableness review to Article I, Section 4 of the Ohio Constitution and concluding that “there is no constitutional right to bear concealed weapons”). R.C. 2923.12(A)(2), as a regulation on carrying concealed weapons, does not prohibit the possession of firearms, but merely regulates the manner in which they may be possessed. For this reason, we consider Glover’s challenge to the statute under an intermediate level of constitutional scrutiny. *Shover* at ¶ 13; *State v. Henderson*, 11th Dist. Portage No. 2010-P-0046, 2012-Ohio-1268, ¶ 49.

{¶7} To survive this level of scrutiny, R.C. 2923.12(A)(2) “(1) must be narrowly tailored to serve a significant government interest, and further, it (2) must leave open alternative means of exercising the right.” *Henderson* at ¶ 52, citing *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U.S. 37, 45 (1983). R.C. 2923.12(A)(2) is tailored to serve the significant government interest of guarding public safety. The statute does not prohibit keeping or bearing handguns provided that they are not knowingly concealed, either on the person or ready at hand. In other words, R.C. 2923.12(A)(2) leaves ample alternative means of exercising the right to keep and bear arms apart from the knowing concealment prohibited by the statute. In addition, one need look no further than R.C. 2923.12(B)/(C)(2) to discover that one alternative means of exercising the right involves obtaining a concealed handgun license. As such, the statute does not unconstitutionally infringe upon the guarantees of the Second Amendment.

{¶8} Ms. Glover has separately argued that R.C. 2923.12(A)(2) is unconstitutional under Article I, Section 4 of the Ohio Constitution, but she did not make this argument in the trial court. Nonetheless, as Ms. Glover observes in her brief, to the extent that the Ohio Supreme Court has analyzed such constitutional challenges under a measure of reasonableness, our

resolution of her Second Amendment challenge under a higher degree of constitutional scrutiny subsumes her argument. *See generally Leis*, 2003-Ohio-4779, at ¶ 8-15.

{¶9} R.C. 2923.12(A)(2) does not violate the Second Amendment's guarantee of the right to keep and bear arms. Ms. Glover's assignment of error is overruled.

III.

{¶10} Ms. Glover's assignment of error is overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

CARLA MOORE
FOR THE COURT

WHITMORE, J.
CONCURS.

HENSAL, P. J.
CONCURRING IN JUDGMENT ONLY.

{¶11} I concur in the judgment. Ms. Glover’s appellate argument relies entirely upon the incorrect presumption that Revised Code Section 2923.12(A)(2) “prohibits the carrying or possession of [a] handgun.” Section 2923.12(A)(2) only prohibits the carrying of a *concealed* handgun. *See id.* (“No person shall knowingly carry or have, *concealed* on the person’s person or *concealed* ready at hand * * * [a] handgun other than a dangerous ordnance.”) (Emphasis added.). While such a prohibition would limit Ms. Glover’s ability to carry weapons, “the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008). “For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.” *Id.*

{¶12} Given that Section 2923.12(A)(2) only restricts a person’s ability to carry *concealed* weapons and the long history permitting restrictions on the carrying of concealed weapons, I concur in the majority’s judgment that Section 2923.12(A)(2) is constitutional. *See Cleveland v. McCardle*, 139 Ohio St.3d 414, 2014-Ohio-2140, ¶ 13 (“The intermediate-scrutiny test has three requirements: the regulation must be narrowly tailored, it must serve a significant government interest, and it must leave open ample alternative avenues of [exercising the right].”).

APPEARANCES:

NEIL P. AGARWAL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.