

Affirmed and Opinion filed November 1, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00614-CR

JOHN E. FIALA, Appellant

V.

THE STATE OF TEXAS, Appellee

**On Appeal from the County Criminal Court of Law No. 11
Harris County, Texas
Trial Court Cause No. 0979239**

OPINION

Appellant John Fiala entered a plea of no contest to the offense of unlawful possession of a handgun and was given deferred adjudication. Appellant alleges the trial court erred in denying his pretrial motion purportedly challenging personal jurisdiction based on appellant's assertion that the statute under which he was charged is unconstitutional. On appeal, appellant brings four points of error challenging his conviction. We affirm.

DISCUSSION

Although appellant entitles his motion to quash a "Motion to Quash for Lack of In-Personam Jurisdiction," appellant does not appear to be challenging the county court's

jurisdiction to hear this case under the Texas Government Code,¹ nor is he challenging the trial court's personal jurisdiction over him.² Rather, based on the appellant's argument at the hearing on his motion and the argument contained in his appellate brief, appellant is challenging the constitutionality of section 46.02 of the Texas Penal Code under the various grounds discussed below.

Section 46.02 of the Texas Penal Code and Article I, Section 23 of the Texas Constitution

In determining the constitutionality of a statute, the court shall presume the statute is valid and the legislature acted reasonably in enacting it. *Ex Parte Granviel*, 561 S.W.2d 503, 511 (Tex. Crim. App. 1978). The burden of establishing the unconstitutionality of an act rests on the person challenging the act. *Id.* Article 1, section 23, of the Texas Constitution provides that the "Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime." TEX. CONST. art. I, § 23. This power has consistently been held to authorize the Legislature to enact laws such as section 46.02 of the Texas Penal Code. *See Masters v. State*, 685 S.W.2d 654, 655 (Tex. Crim. App. 1985) (citing *Roy v. State*, 552 S.W.2d 827 (Tex. Crim. App. 1977)). Appellant has not met his burden in demonstrating why section 46.02 of the Texas Penal Code is unconstitutional.

¹ The answer to the question of whether the county court had jurisdiction to hear this case is clearly that it does. *See* TEX. GOV'T CODE ANN. § 26.045 (Vernon Supp.2001) (giving county courts original jurisdiction over misdemeanors except where the highest fine to be imposed cannot exceed \$500); *see also* TEX. PEN. CODE ANN. § 46.02 (Vernon Supp. 2001) (defining the unlawful carrying of a weapon as a Class A misdemeanor); TEX. PEN. CODE ANN. § 12.21 (Vernon 1994) (stating that a Class A misdemeanor is punishable by a fine up to \$3000 and/or up to a year in jail).

² In a criminal proceeding, jurisdiction is comprised of the power of the court over the "subject matter" of the case, conveyed by statute or constitutional provision, coupled with personal jurisdiction over the accused, which is invoked in felony prosecutions by the filing of a sufficient indictment or information if indictment is waived. *Fairfield v. State*, 610 S.W.2d 771, 779 (Tex. Crim. App.1981). In misdemeanor cases, the State may choose to file an indictment or an information. TEX. CRIM. PROC. CODE ANN. § 12.02 (Vernon 1977). As established above, appellant was charged with a misdemeanor offense. The State filed an information in Harris County Criminal Court at Law Number 11. We conclude the trial court obtained personal jurisdiction over appellant by the State's presentation of the information.

Therefore, appellant's first point of error is overruled.

Section 46.02 of the Texas Penal Code and the Second Amendment to the Constitution of the United States of America

The contention that the Second Amendment to the Constitution of the United States prohibits state regulation of weapons, as it is at issue in this case, has been consistently rejected. *Masters*, 685 S.W.2d at 655 (citing *U.S. v. Cruikshank*, 92 U.S. 542, 553 (1875)). The Second Amendment does not apply to the states. *Id.* (citing *Quilici v. Village of Morton Grove*, 695 F.2d 261 (7th Cir.1983); *Presser v. Illinois*, 116 U.S. 252, 265, (1886); *U.S. v. Miller*, 307 U.S. 174, (1939); *U.S. v. Oakes*, 564 F.2d 384 (10th Cir.1977); *U.S. v. Williams*, 446 F.2d 486 (5th Cir.1971); *Vietnamese Fishermen's Assoc. v. Knights, etc.*, 543 F.Supp. 198 (S.D. Tex.1982)). Therefore, appellant's second point of error is overruled.

Waiver

Appellant asserts in his brief the trial court erred in denying his motion to quash for lack of in personam jurisdiction on the grounds that section 46.02 of the Texas Penal Code is unconstitutional because it concludes guilt in advance in violation of the Texas Constitution and Constitution of the United States of America. Appellant also asserts the trial court erred in denying his motion to quash for lack of in personam jurisdiction because the State had the burden of proof to establish jurisdiction and offered no testimony at the hearing. Appellant waives these points of error.

Appellant asserts no authority in support of his contentions. *See* TEX. R. CIV. P. 38.1. Accordingly, appellant waives these points of error. *Id.*; *see also Novostad v. Cunningham*, 38 S.W.3d 767, 771 (Tex. App.—Houston [14th Dist.] 2001, no pet. h.) (holding that when a party cites no authority in support of its point of error that issue is waived).

CONCLUSION

We affirm the decision of the trial court.

John S. Anderson
Justice

Judgment rendered and Opinion filed November 1, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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