

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,
Plaintiff-Appellee,

v.

AUSTIN MAHANA,
Defendant-Appellant.

Cerro Gordo County No.
FECR031848

SUPREME COURT NO.
24-0239

APPEAL FROM THE IOWA DISTRICT COURT
FOR CERRO GORDO COUNTY
HONORABLE ADAM D. SAUER, JUDGE

APPELLANT'S BRIEF AND ARGUMENT
AND
REQUEST FOR ORAL ARGUMENT

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The defendant's conviction for possession of a firearm by a prohibited person is unconstitutional under the Second Amendment of the United States Constitution and under Article I, Section 1A of the Iowa Constitution.

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court because the issue raised involves a substantial issue of first impression in Iowa. Iowa R. App. P. 6.903(2)(a)(4) and 6.1101(2)(c) (2024). Specifically, for the first time, this defendant challenges the constitutionality of Iowa's felon in possession of a firearm law since the United States Supreme Court decided New York State Rifle Assn, In. v. Bruen, 597 U.S. 1 (2022), which clarified the analysis of the Second Amendment rights restrictions. Further, this Court has yet to address the issue under Iowa's recently adopted amendment to its constitution establishing the right to bear arms as a fundamental right and requiring strict scrutiny of any law infringing on that right. Iowa Const. Art. I, sec. 1A.

NATURE OF THE CASE

Appellant Austin Mahana appeals following his trial on the minutes, judgment and sentence, to the charge of prohibited person in possession of a firearm in violation of Iowa Code §§ 724.25 and 724.26 (2022). D0118, Judgment and Sentence, at 1-2 (2/7/2024). The defendant was sentenced to a suspended indeterminate term of incarceration not to exceed five years and placed on probation for

three years. D0118 at 1-2. In this appeal, the defendant challenges the constitutionality of his conviction under the Iowa and U.S. Constitutions.

STATEMENT OF THE FACTS

On December 5, 2022, an officer from the Mason City Police Department called the defendant, Austin Mahana, and informed him that he was not allowed to possess a firearm because he had a previous conviction for an aggravated misdemeanor involving firearms. D0115, Ruling Following Trial on the Minutes and Order Scheduling Sentencing Hearing, at 2 (12/12/2023). The defendant was not pleased to hear this information and came to the police station with a firearm on his person to discuss the issue. He was arrested. D0115 at 2. The defendant had previously been convicted of “carrying weapons” for carrying a loaded pistol in his car, which was then a violation of Iowa Code section 724.4, an aggravated misdemeanor. D0115 at 2.

Other relevant facts will be mentioned below.

ARGUMENT

I. The defendant's conviction for possession of a firearm by a prohibited person is unconstitutional under the Second Amendment of the United States Constitution and under Article I, Section 1A of the Iowa Constitution.

Preservation of Error: Error was preserved since the matter was raised, argued extensively, and ruled upon by the trial court. State v. Brown, 656 N.W.2d 355, 361 (Iowa 2003). The constitutionality of the defendant's conviction was challenged under both the U.S. Constitution and the Iowa Constitution in the district court, and the district court ruled on the issue. D0030, Defendant's Motion to Dismiss (12/28/2022); D0049, Amended Motion to Dismiss (1/10/2023); D0133, Hrg. on Pretrial Motions, p. 9, L. 14 – p. 25, L. 24 (1/11/2023); D0057, Ruling on Motion for Dismissal and Temporary Injunction (2/3/2023); D0098, Brief by Defendant Regarding Motion to Dismiss and Motion in Limine (6/12/2023); D106, Ruling on Defendant's Renewed Motion to Dismiss (8/22/2023).¹

¹ The defendant represented himself with the aid of standby counsel, so most of the motions were filed pro se. Throughout the filings, briefing, hearing, and ruling, the issues were preserved. D0028, Order Allowing the Defendant to Represent Himself (12/27/2022).

Standard of Review: When a defendant challenges a district court’s deprivation of a state or federal constitutional right, our standard of review is de novo. State v. Brown, 890 N.W.2d 315, 321 (Iowa 2017).

Merits: Iowa Code section 724.26 (2022) provides that “[a] person who is convicted of a felony in a state or federal court, . . . and who knowingly has under the person’s dominion and control or possession, receives, or transports or causes to be transported a firearm or offensive weapon is guilty of a class ‘D’ felony.” A felony is defined as

any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less.

Iowa Code § 724.25 (2022). In this case, the defendant was prohibited from possessing a firearm, not because of a felony conviction, but from a misdemeanor conviction for “carrying weapons” under Iowa Code section 24.4 (2018). That code section,

which has since been stricken and replaced,² stated:

Except as otherwise provided in this section, a person who goes armed with a dangerous weapon concealed on or about the person, or who, within the limits of any city, goes armed with a pistol or revolver, or any loaded firearm of any kind, whether concealed or not, or who knowingly carries or transports in a vehicle a pistol or revolver, commits an aggravated misdemeanor.

Iowa Code § 724.2(1) (2018). The crime for which the defendant was convicted is no longer a crime. See Iowa Code § 724.4 (2024).

Iowa Code § 724.5 (2024) states “[t]he availability of a professional or nonprofessional permit to carry weapons under this chapter shall not be construed to impose a general prohibition on the otherwise lawful unlicensed carrying or transport, whether openly or concealed, of a dangerous weapon, including a loaded firearm.” The defendant was convicted of a misdemeanor that was classified as a felony for purposes of the prohibited person statute. This statutory scheme violates the Second Amendment and it unconstitutional

² That section now states: “A person who goes armed with a dangerous weapon on or about the person, and who uses the dangerous weapon in the commission of a crime, commits an aggravated misdemeanor, except as provided in section 708.8.” Iowa Code § 724.4 (2024). This section was changed effective 7/1/2021. 2021 Iowa Acts ch. 35 H.F. 756 § 9.

under the Iowa Constitution.

A. Second Amendment challenge under New York State Rifle & Pistol Assn., Inc. v. Bruen.

In New York Rifle & Pistol Ass’n, Inc. v. Bruen, 597 U.S. 1, 24 (2022) the United States Supreme Court held that

the standard for applying the Second Amendment is as follows: When the Second Amendment’s plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s “unqualified command.” Konigsberg v. State Bar of Cal., 366 U.S. 36, 50, n.10 (1961).

The “government must identify a well-established and representative historical *analogue*, no a historical *twin*.” Id. at 40 (emphasis in original). Following an analysis of many of our historical firearm laws, the Court concluded that “[t]he historical evidence from antebellum America does demonstrate that *the manner* of public carry was subject to reasonable regulation. Under common law, individuals could not carry deadly weapons in a manner likely to terrorize others.” Further, the court found that historical surety statutes, which did not restrict the carrying of firearms, added an incentive to do so responsibly. Id. at 59.

In this case the State failed its burden to identify a historical analogue to our statute restricting possession of firearms to nonviolent misdemeanants, reclassified as felons only for the purposes of stripping their Second Amendment right to bear arms. The State, in its resistance to the defendant's motion to dismiss simply stated that other courts have upheld challenges against the federal statute, 18 U.S.C. § 922(g)(1), and cited cases decided prior to Bruen. D0050, Resistance to Defendant's Motion to Dismiss, at 7-8 (1/10/2023).

The district court's decision to deny the defendant's motion to dismiss did not delve much into the historical analogue discussion either. The court cited District of Columbia v. Heller, 554 U.S.570 (2008) and Attorney General United States v. Range, 53 N.W.4th 262 (3rd Cir. 2022)³ for the proposition that the courts have not questioned prohibitions against felons possessing firearms. In

³ The district court's reliance on this case is now out of date. Following rehearing, the Third Circuit reversed the holding that the district court relied on here. See Attorney General United States v. Range, 69 F.4th 96, 106 (3rd Cr. 1023). Then, that opinion was recently vacated and remanded by the United State Supreme Court in light of the Rahimi decision. Garland v. Range, 144 S. Ct. 2706 (2024) (memorandum opinion).

Heller, the Court held that the Second Amendment guarantees the individual the right to bear arms and statutes prohibiting possession in the home violated the Second Amendment. Heller, 554 U.S. at 635. Although the issue in this case was not before the Court in Heller, it stated:

Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626-27. The Court also noted, however, that they identified “these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive.” Id. at 626 n.26.

Therefore, Heller does not stand for the proposition that all laws prohibiting felons from possessing firearms pass Second Amendment analysis. In fact, a number of courts have refused to simply approve statutes prohibiting categories of people from possessing firearms based on dicta from Heller. See United States v. Brunner, _____ F. Supp. 3d ____, 2024 WL 1406190 (4/2/2024 S.D. Ill) (holding, after a Bruen analysis, that the defendant’s charge

of felon in possession of a firearm under 18 U.S.C. 922 § (g)(1) was unconstitutional and dismissing the indictment); United States v. Hale, 716 F. Supp. 3rd 704, 712-13 (N.D. Ill. 2024) (holding U.S.C. 922 § (g)(1) unconstitutional under Bruen analysis); United States v. Harrison, 654 F. Supp. 3rd 1191, 1211-22 (W.D. Okl. 2023) (dismissing indictment and finding the defendant's status as a marijuana user prohibiting him from possessing a firearm was unconstitutional under the Second Amendment); United States v. Hicks, 649 F. Supp. 3rd 357, 366 (W.D. Tex. 2023) (granting motion to dismiss indictment under 19 U.S.C. § 922(n), which prohibits receiving a firearm while under indictment for a crime punishable by more than one year, was a violation of the Second Amendment); United States v. Connolly, 117 F. 4th 269, 281-82 (5th Cir. 2024) (finding no historical support to prohibit gun possession under 18 U.S.C. § 922(g)); United States v. Hosteller, _____ F. Supp. 3rd _____, 2024 WL 1549892 at *6 (N.D. Ohio 4/10/2024) (granting a motion to dismiss based on an as applied challenge to U.S.C. § 922(g)(1)); United States v. Williams, 718 F. Supp. 3rd 651, 683 (E.D. Mich. 2024) (finding 18 U.S.C. § 922(g)(1) was unconstitutional as applied to the defendant); United States v. LeBlanc, 707 F. Supp. 3rd 617,

633-34 (M.D. La. 2023) (finding 18 U.S.C. § 922(g)(1) was unconstitutional as applied under Bruen as there was no evidence of a threat); United States v. Harper, 689 F. Supp. 3rd 16, 35 (M.D. Penn. 2023) (holding 18 U.S.C. § 922(g)(1) unconstitutional as applied). The district court and the State's reliance on the overturned Range case from 2022 and dicta in Heller were insufficient to support a holding that the defendant's status as a prohibited person is constitutional under the historical analysis required by Bruen.

Furthermore, the district court adopted with too broad of a brush in its ruling by relying on dicta. The court cited references in Bruen that states could not disarm "law abiding" citizens. D0057 at 3. However, if the district court is correct and legislatures can restrict firearms to only law-abiding citizens, then any person who has ever had a speeding ticket or other traffic violation would fall into that group. There is no support in Bruen or any other Second Amendment case that would suggest such a broad restriction has historical support. The district court did not explain any historical evidence that the states can restrict firearm possession to only law-abiding citizens.

In United States v. Rahimi, 602 U.S. _____, 144 S. Ct. 1889, 1903 (2024), the Court rejected a similar argument by the government that the defendant in that case, who was a felon, could be disarmed simply because he was not “responsible.” The government had attempted to argue that, because such language was used in prior Second Amendment cases, a person who was not responsible could be prohibited from possessing a firearm. Id. However, whether a “responsible person” could lawfully possess a firearm, was not the question before the court. Id. Similarly, whether a “law abiding” citizen can be disarmed as a category was not the question presented in Bruen, and is nothing more than dicta. The district court’s reliance on that language is error.

The Rahimi Court did find that “[a]n individual found by a court to pose a credible threat to the physical safety of another may be temporarily disarmed consistent with the Second Amendment.” Id. The court compared Rahimi’s prohibition to possess a firearm to historical surety bonds of limited duration: Rahimi’s prohibition was temporary and only prohibited him for possessing a firearm while he was subject to a restraining order that found him to be a threat to the physical safety of another. Id. at 1901. The Rahimi

decision is narrow in that it concerned a temporary disarming of a person specifically found to be a threat to the safety of another. Such laws prohibiting the possession of firearms by those who use it in a way that terrorizes the community have firm grounds in history. Such a situation is very different from this case, where the probation is permanent, and there was no finding that the defendant posed any danger to anyone, and his previous conviction that disarmed him was a misdemeanor (defined as a felony for the purposes of this crime alone). Iowa Code §§ 724.25, .26 (2024).

Much has been written about what the founding fathers intended by the language of the Second Amendment as well as the what the laws were restricting gun rights at the time of the ratification of the Second Amendment. One such thorough analysis can be found in the dissent in Kanter v. Barr, 919 F.3rd 437 (7th Cir. 2019) by now Supreme Court Justice Barrett. In that dissent, then Judge Barrett pointed out that simply labeling prohibitions should be against “criminals” or felons” is too vague to provide accurate guidance. Id. at 454 (Barrett, J, dissenting). The vast majority of the laws were designed “disarm those who have demonstrated a proclivity for violence or whose possession of guns would otherwise

threaten the public safety.”⁴ Id. (Barrett, J. dissenting). This sort of analysis seems logical and appropriate when one looks at Iowa’s overarching felon in possession law. It is entirely likely that the crimes considered felonies in the 1700s would be more serious today. For instance, there has been a lot of discussion that felons were once subjected to the death penalty and therefore the idea of disarming them should be a given. Id. In today’s society, however, we would not (or at least should not) entertain the idea that all felonies, violent or not, would subject the perpetrator to death. Further, since the crime in this case that disarmed the defendant was an aggravated misdemeanor and only defined as a felon for purposes of disarming him, the slope could become quite slippery. Could the legislature simply re-classify any crime into a felony and therefore disarm any non-law-abiding citizen? There must be some kind of finding that the person poses some kind of threat in order to be deprived of his fundamental right in keeping with the historical analogue of firearm laws. See id. at 459 (stating “[b]y the time the

⁴ Counsel (although far from a firearm law historian) could find no similar law making it a felony to carry firearms in any mode of transportation in the 1700s, much less making such action the basis to permanently disarm a citizen.

Constitution was ratified, James Wilson, observed that while the term ‘felony’ was once ‘very strongly connected with capital punishment,’ that was no longer true”) (quoting John, D. Bessler, *Cruel & Unusual*, 52-53 (2012)). The district court was wrong to deny the defendant’s motion to dismiss.

B. Iowa Constitution article I, Section 1A

Effective November 8, 2022, the Iowa Constitution was officially amended to add the following language:

The right of the people to keep and bear arms shall not be infringed. The sovereign state of Iowa affirms and recognizes this right to be a fundamental individual right. Any and all restrictions of this right shall be subject to strict scrutiny.

Iowa Const. Art I, § 1A. Under the strict scrutiny standard, the State has the burden to show that the statute in question “serves a compelling state interest and is the least restrictive means of attaining that interest.” State v. Zimmerman, 810 N.W.2d 1, 16 (Iowa 2012). It must advance “the interests of the highest order’ and must be narrowly tailored in pursuit of those interests.” Id. (cleaned up). Iowa’s prohibited person law is not narrowly tailored and infringes on the fundamental right of the defendant to possess a firearm.

Our law disarms any person convicted of any felon, violent and not, as well as those convicted of certain misdemeanors; some violent and others not. Iowa Code §§ 724.24, .26 (2024). There is no requirement that the court make any kind of finding that the person poses any danger to society or any individual person simply because he falls into a class of people. Indeed, in this case, the defendant became a prohibited person because he had a loaded gun in his car without a permit to carry, which was a requirement at the time. It is no longer a requirement. Iowa's statute that defines some misdemeanors as felonies only for the purpose of the prohibited person statute paints too broad of a brush and has nothing to do with the State's interest in curbing violent crime, especially in this situation where the defendant simply had a gun in his car, pled guilty to that charge without an attorney and apparently with no knowledge at the time that the conviction would bar him for life for possessing a firearm. The law is not narrowly tailored for the ends for which it exists. See D0020, Minutes of Testimony, at 3 (12/16/2022). The State has a legitimate interest in public safety and disarming dangerous or threatening people. However, it has done so in way that is not narrowly tailored and

scoops up people, like the defendant, who did nothing violent yet his forever disarmed. The law is unconstitutional on its face and as applied to the defendant.

CONCLUSION

For these reasons, the defendant requests this court reverse the trial court's ruling on the defendant's motion to dismiss.

REQUEST FOR ORAL ARGUMENT

Counsel requests to be heard in oral argument.

CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR BRIEFS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g)(1) and 6.903(1)(i)(1) because:

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