

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

THE HONORABLE JAMES ROGAN, JUDGE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

AUG - 1 2022

DAVID H. YAMASAKI, Clerk of the Court

By: L. Cole, Deputy Clerk

PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

v.

NOEMI FUENTES,

Defendant

22NM01648

RULING

Introduction

The Anaheim City Attorney charged Defendant with a violation of California Penal Code section 25850(a), Carrying a Loaded Firearm in Public.

According to counsel, on December 22, 2021, during an outdoor physical altercation among family members, the Defendant allegedly directed her husband to retrieve from her nearby vehicle her gun. The Defendant allegedly took the gun from her husband, and the altercation ended. When officers arrived, the defendant allegedly told them (1) that she had a handgun in her vehicle; (2) the gun was registered to her, and (3) that she had entered the fight in order to get between the two men and break it up. She allegedly told the officers that she asked her husband to retrieve the gun from the car for her in order to defend herself in case the physical combat escalated. According to

counsel, after the gun was retrieved, the fight ended and the Defendant immediately returned the gun to the vehicle. There is no allegation that the Defendant either brandished the gun or directed anyone else to do so. The gun was loaded and there was a round in the chamber at the time officers cleared the weapon. The Defendant has no prior criminal history, nor has she been arrested subsequent to this case.

Ruling

On June 23, 2022, in *New York State Rifle & Pistol Association vs. Bruen*, ___ U.S. ___, No. 20-843, 2022 DJDAR 6325, the United States Supreme Court, painting with a very broad brush, removed the confusion and vagueness surrounding the rights of law-abiding citizens to keep and bear arms as encapsulated in the Second Amendment to the Constitution of the United States.

Citing *District of Columbia vs. Heller*, 554 U.S. 570 and its progeny, the Court reiterated that “individual self-defense is the central component of the Second Amendment right,” and that ordinary law-abiding adult citizens are part of “the people” whom the Second Amendment protects.

In *Bruen*, the Court further held that the petitioner's right to carry handguns publicly for self-defense is guaranteed by the Second Amendment. Nothing in the Second Amendment text draws a home or public distinction with respect to the right to keep and bear arms, and the definition of “bear” naturally encompasses public carry. Moreover, the Second Amendment guarantees an

“individual right to possess and carry weapons in case of confrontation,” and confrontation can surely take place outside the home.

As for the right of states to regulate the carrying of firearms, the Court conceded that a state may regulate the carrying of concealed firearms, as long as such regulation is consistent with America's historical tradition of firearm regulation as it stood at the time of the adoption of the Second and Fourteenth Amendment. The Second Amendment was adopted in 1791; the Fourteenth Amendment in 1868. Historical evidence that long predates or postdates either time does not illuminate the scope of the right to keep and bear arms. The Court noted that the history of the colonies and early Republic identified certain examples of restrictions on public carry from that time, but none of these colonial laws provide justification for laws restricting the public carry of weapons that are unquestionably in common use today, namely handguns.

In its opinion, the Court used the phrase “law-abiding citizens” repeatedly to demonstrate that the right to keep and bear arms in public is a universal right among this class of citizens subject to any reasonable state regulations that comport with the historic traditions of the Second and Fourteenth Amendments. This is in accord with its analysis that at the time of the adoption of the relevant amendments, there were recognized restrictions on people not within that class of law-abiding citizens upon whom reasonable regulations could be attached.

The Court went on to say that apart from a few late-19th century outlier jurisdictions, American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor have they generally required law abiding, responsible citizens to

“demonstrate a special need for self-protection distinguishable from that of the general community to carry arms in public.”

The Court concluded that the constitutional right to bear arms in public for self-defense is not “a second class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.” The exercise of other constitutional rights does not require individuals to demonstrate to government officers some special need. The Second Amendment right to carry arms in public for self-defense is no different, and thus the New York law violated the constitutional right of law-abiding citizens from exercising their right to keep and bear arms in public.

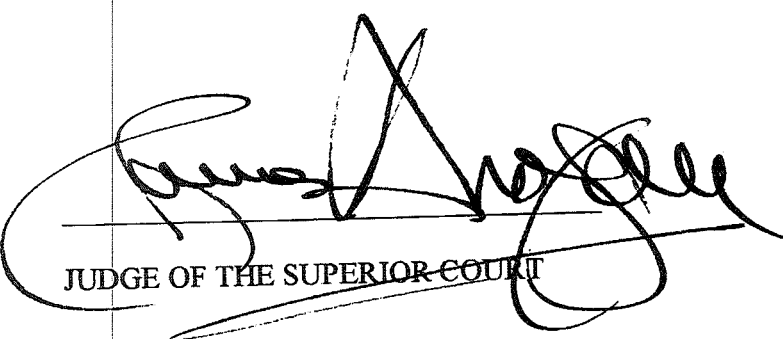
In the instant case, this court does not find the charging statute unconstitutional on its face because, as noted by the United States Supreme Court in *Bruen*, there are instances when laws proscribing the carrying of firearms may be properly implemented. But here, where the defendant has no prior criminal record and carried a firearm for self-defense, the state statute is unconstitutional as it applies to her.

For all the foregoing reasons, the motion is granted and the case is dismissed.

SO ORDERED.

Aug 1, 2022

(Date)


JUDGE OF THE SUPERIOR COURT