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UNITED STATES OF AMERICA V. GHOSHTPHACE

By Nabila Chowdhury

UNITED STATES SUPREME COURT
NO. 20-843

United States of America
Plaintiff-Appellee

Versus

Junya Ghoshtphace
Defendant-Appellant

Appeal from the Fifth Circuit Court

Argued: March 17, 2023
Decided: June 30, 2023

Before **GONZALEZ, VIVIANO, JACKSON, CHOWDHURY, ADESINA, OKUSANYA,** and **JEONG** Supreme Court Judges.

FACTS OF THE CASE

On **December 19th, 2019,** Ghoshtphace and his girlfriend J.T. had an argument in a parking lot in Arlington, Texas. J.T. made an attempt to leave causing a physical struggle between herself and Ghoshtphace. He used force to lock J.T. back into his vehicle leaving her with an injury to the head. After realizing someone was witnessing their altercation, Ghoshtphace recovered his firearm. In the meantime, J.T. escaped the car and fled the scene. Ghoshtphace later contacted J.T. to ensure she did not contact the police, threatening her family's safety if she did.

In **February 2020**, the Texas state court granted J.T. a two-year restraining order after allowing Ghoshtphace an opportunity and notice for a hearing. The court found that Ghoshtphace had "committed family violence" and such violence was "likely to occur again in the future". He was prohibited from threatening, harassing, and approaching J.T. and her family as well as prohibited from possessing and carrying a firearm. Ghoshtphace was warned if he went against the court's orders he would be charged with a federal felony. GhoshtPhace signed in acknowledgment that he "received a copy of this protective order in open court at the close of the hearing in this matter".

In **August 2020**, Ghoshtphace was arrested for violating the order by engaging in disorderly conduct while sitting outside of J.T.'s home after dark. Ghoshtphace participated in a series of four shootings in **January 2021**. First, after someone "started talking 'trash'" on social media, the following day when a vehicle collided with his own, three days after when a friend's card declined at a restaurant, and lastly in late January Ghoshtphace fired shots "across a public road" to "feel something". Police officers identified Ghoshtphace as a suspect in these cases and searched his home after recovering a search warrant. They uncovered pistol and rifle magazines as well as a .45- caliber pistol, and .308-caliber rifle. Ghoshtphace was indicted by a federal grand jury in the Northern District of Texas for violating 18 U.S.C. 922(g)(8) and 924(a)(2). C.A. ROA 19-22. Section 922(g)(8), which Congress enacted in 1994, prohibits a person who is subject to a domestic violence restraining order from possessing a firearm in or affecting commerce. Ghostphace made a motion to dismiss the indictment by arguing Section 922(g)(8) violated the Second Amendment on its face. The district court denied this move, observing that the Fifth Circuit had previously upheld the constitutionality of Section 922(g)(8) in United States v. McGinnis. Ghoshtphace proceeded to plead guilty. The court sentenced him to 64 months of imprisonment, to be followed by two years of supervised release. But after this, The Supreme Court heard and decided the case New York State Rifle & Pistol Association v. Bruen, and the Fifth Circuit received a supplemental briefing on Bruen. The court reversed and held that Section 922(g)(8) violates the Second Amendment on its face.

QUESTIONS PRESENTED

1. Whether 18 U.S.C. 922(g)(8), which prohibits the possession of firearms by persons subject to domestic violence restraining orders, violates the Second Amendment on its face.

CONSTITUTIONAL PROVISIONS

Second Amendment

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.

Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Fourteenth Amendment

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPLICABLE CASE LAW

New York State Rifle & Pistol Association, Inc., et al v. Bruen, Superintendent of New York State Police, et al. (2021)

On June 23, 2022, the United States Supreme Court struck down a New York law that placed limits on carrying a weapon. The State of New York makes it a crime to carry a firearm without a license whether inside or outside the home. To obtain an unrestricted license to "have and carry" proper cause has to be proven. Robert Nash and Brandon Koch both applied for concealed-carry licenses on the basis of "self-defense". The state denied a license on the determination that they did not demonstrate "a special need for self-protection distinguishable from that of the general community" which is called the "proper cause" requirement. Petitioners sued the respondents for violating the Second and Fourteenth Amendments. The District Court dismissed the petitioner's complaints and the Court of Appeals affirmed. In a 6-3 ruling, the Supreme Court found the State of New York's law unconstitutional. Other states, including Massachusetts, California, Hawaii, Maryland, New Jersey, and Rhode Island, have similar laws on the books, according to briefs filed in the case. This ruling comes at a sensitive time after mass shootings killed innocent children and families in Buffalo N.Y. and Uvalde, Texas. It also sets the precedent that any restrictions on firearms in state law may be unconstitutional under the new Supreme Court Justices.

District of Columbia v. Heller (2008)

In a 5-4 ruling, the Court held that the Second Amendment protects an individual right to possess firearms for lawful use, such as self-defense, in the home. This struck down unconstitutional provisions of D.C. law that (1) effectively banned possession of handguns by nonlaw enforcement officials and (2) required lawfully owned firearms to be kept

unloaded, disassembled, or locked when not located at a business place or being used for lawful recreational activities. According to the Court, the ban on handgun possession in the home amounted to a prohibition on an entire class of 'arms' that Americans overwhelmingly chose for the lawful purpose of self-defense. Similarly, the requirement that any firearm in a home be disassembled or locked made "it impossible for citizens to use arms for the core lawful purpose of self-defense." These laws were unconstitutional "under any of the standards of scrutiny the Court has applied to enumerated constitutional rights." But the Court did not cite a specific standard in making its determination, and it rejected the interest-balancing standard; proposed by Justice Breyer, and a "rational basis" standard. Breyer concludes that under a balancing test that takes into account the extensive evidence of gun crime and gun violence in urban areas, the district's gun law would be constitutionally permissible. Breyer was joined in his dissent by Justices Ginsberg, Souter, and Stevens.

United States v. Hayes

In a 7-2 decision delivered by Justice Ginsberg the Supreme Court reversed the Fourth Circuit holding that the predicate offense statute need not include the existence of a "domestic relationship" as an element of the crime in order to qualify as a "misdemeanor crime of domestic violence" as specified by the Gun Control Act of 1968. The Court reasoned that the language of the Gun Control Act suggested that the predicate offense statute need only include "the use of force" as an element of the crime and need not include a "domestic relationship" as an additional element.

United States v. Castleman (2014)

Justice Sonia Sotomayor delivered the opinion for the 9-0 majority. The Court held that, because the statute in question—that prevents people convicted of misdemeanor domestic violence from possessing firearms—incorporates an element regarding the use of physical force, it includes those convicted of domestic assault under state law. This reading of the statute is consistent with the common-law meaning of violence, and to read it otherwise would have meant that the statute was ineffective in many states at the time of its enactment. Because the Tennessee statute under which Castleman was convicted necessarily involved the use of physical force, it should be considered a misdemeanor domestic violence conviction for the purpose of the federal statute.

MAJORITY OPINION OF THE COURT OF APPEALS

Justice GONZALEZ delivered the majority opinion with **Justice VIVIANO, JACKSON, JEONG** concurring.

Our prior panel opinion is WITHDRAWN and the following opinion is SUBSTITUTED therefore: This case does not present the question of whether or not prohibiting the possession of a firearm by someone subject to a domestic violence restraining order is a commendable policy goal. Rather the question is whether 18 U.S.C. § 922(g)(8), the specific statute that does so, is constitutional under the Second Amendment of the United States Constitution. In the light of N.Y. State Rifle & Pistol Association, Inc. v. Bruen, this court deems it is not.

A. Second Amendment Rights

The Second Amendment provides, simply enough: "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." In US v. Heller, it is explained that the words "the people" in the Second Amendment have been interpreted throughout the Constitution to "unambiguously refer to all members of the political community, not an unspecified subset." Further, "the people" "refer to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community." (citing United States v. Verdugo–Urquidez, 494 U.S. 259, 265 (1990)). For these reasons, the Heller court started its analysis with a "strong presumption that the Second Amendment right is exercised individually and belongs to all Americans," and then confirmed that presumption. From the record before us, it is clear that Ghoshtphace, at the time he was charged in violation of § 922(g)(8), was still protected under the amendment as it holds him under "the people". Ghostphace, once charged, was subject to an agreed domestic violence restraining order that was entered in a civil proceeding. That alone was not enough to remove him from the political community within the amendment's scope as he was neither a convicted felon nor subject to any other "longstanding prohibition on the possession of firearms". Ghoshtphace is far from being a model citizen, but he is not a felon.

The question of whether Ghostphace's right to bear and keep arms can be constitutionally restricted under the operation of § 922(g)(8) now comes into play. The parties dispute Ghostphace's burden necessary to sustain his facial challenge to the statute as "a facial challenge to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual."

After reevaluating the recent ruling in Bruen, the Petitioner fails to demonstrate that § 922(g)(8)'s restriction of the Second Amendment right fits within our Nation's historical

tradition of firearm regulation. The Government's proffered analogs falter under one or both of the metrics the Supreme Court articulated in Bruen as the baseline for measuring "relevantly similar" analogs: "how and why the regulations burden a law-abiding citizen's right to armed self-defense." As a result, § 922(g)(8) falls outside the class of firearm regulations countenanced by the Second Amendment.

B. Conclusion

Doubtless, 18 U.S.C. § 922(g)(8) embodies commendable policy goals meant to protect survivors of domestic violence. Weighing those policy goals' merits through the sort of means-end scrutiny our prior precedent indulged, we previously concluded that the societal benefits of § 922(g)(8) outweighed its burden on Ghostphace's Second Amendment rights. But Bruen forecloses any such analysis in favor of a historical analogical inquiry into the scope of the allowable burden on the Second Amendment right. Through that lens, we conclude that § 922(g)(8)'s ban on the possession of firearms is an "outlier that our ancestors would never have accepted." Therefore, the statute is unconstitutional, and Ghostphace's conviction under that statute must be vacated.

We must protect citizens against domestic violence. And we can do so without offending the Second Amendment framework set forth in Bruen. Those who commit or criminally threaten domestic violence have already demonstrated an utter lack of respect for the rights of others and the rule of law. So merely enacting laws that tell them to disarm is a woefully inadequate solution. Abusers must be detained, prosecuted, and incarcerated. And that's what the criminal justice system is for.

REVERSED; CONVICTION VACATED

DISSENTING OPINION OF THE COURT OF APPEALS

Justice CHOWDHURY delivered the majority opinion of the Court, with **Justice ADESINA, OKUSANYA, and JEONG** concurring.

B. Second Amendment Rights

The Second Amendment guarantees that "the right of the people to keep and bear Arms, shall not be infringed." That right, however, is "not unlimited." District of Columbia v. Heller, 554 U.S. 570, 595 (2008). This Court has recognized, for example, that the Second Amendment allows the government to ban "dangerous and unusual weapons", and to exclude weapons from "sensitive places," such as places of religious worship. So too, the Second Amendment allows the government to disarm dangerous individuals—that is, those who would pose a serious risk of harm to themselves or to others if allowed to possess a firearm. Cases Heller and Bruen, add restrictions to the second amendment on it applicability to only "law-abiding, responsible citizens" and "ordinary, law-abiding citizens". Ghostphace's conduct by the domestic violence restraining order as well as the evidence of his disorderly conduct is neither responsible nor law-abiding. Therefore, § 922(g)(8) is constitutional as applied to Ghostphace.

"Firearms and domestic strife are a potentially deadly combination." United States v. Hayes, 555 U.S. 415, 427 (2009). More than a million acts of domestic violence occur in

the United States every year, and the presence of a firearm increases the chance that violence will escalate to homicide. United States v. Castleman, 572 U.S. 157, 160 (2014). "All too often, the only difference between a battered woman and a dead woman is the presence of a gun". In Section 922(g)(8), Congress sought to address that problem by disarming individuals who are subject to domestic violence restraining orders. That prohibition comes into operation only if a court finds, after notice and a hearing, that a person poses a credible threat to the physical safety of an intimate partner or child or expressly forbids the person from using, attempting to use, or threatening to use physical force against the intimate partner or child. And the prohibition lasts only as long as the restraining order remains in effect. Governments have long disarmed individuals who pose a threat to the safety of others, and Section 922(g)(8) falls comfortably within that tradition. The Fifth Circuit's contrary decision misapplies constitutional precedents, conflicts with the decisions of other courts of appeals, and threatens grave harm to victims of domestic violence.

Some early laws categorically disarmed entire groups deemed dangerous or untrustworthy, such as those who refused to swear allegiance. Other laws disarmed individuals who had demonstrated their dangerousness by engaging in particular types of conduct, such as carrying arms that spread fear or terror among the people. A proposal presented by Samuel Adams at the Massachusetts ratifying convention likewise provided that Congress may not "prevent the people of the United States, who are peaceable citizens, from keeping their own arms."

Those statutes show that individuals who were "reasonably accused of intending to injure another or breach the peace" could properly be subject to firearm restrictions that did not apply to others.

In keeping with that history, this Court explained in Heller that the right to keep and bear arms belongs only to "law-abiding, responsible citizens." 554 U.S. And in Bruen, the Court stated that the Second Amendment protects the right of "an ordinary, law-abiding citizen" to possess and carry arms for self-defense. Those descriptions suggest that the government may properly disarm citizens who are dangerous, irresponsible, or unlikely to abide by the law.

D. Conclusion

Nothing in Heller or Bruen suggests that the Amendment gives a right to dangerous, non-law-abiding persons to have arms available for inflicting harm on other persons—particularly in their own homes.

We dissent.

WORKS CITED

"New York State Rifle & Pistol Association Inc. v. Bruen." Oyez, www.oyez.org/cases/2021/20-843. Accessed 19 Jul. 2022.

"United States v. Castleman." Oyez, www.oyez.org/cases/2013/12-1371. Accessed 9 Jul. 2023.

"United States v. Hayes." Oyez, www.oyez.org/cases/2008/07-608. Accessed 9 Jul. 2023.

Golde, Kalvis. “United States v. Rahimi.” SCOTUSblog, www.scotusblog.com/case-files/cases/united-states-v-rahimi/. Accessed 09 July 2023.