

LAW REVIEW

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IS POSSESSION OF AN “ASSAULT WEAPON” LEGAL IN CALIFORNIA?

Michael Eugene James had roughly 20 firearms registered in his name. He also owned assault weapons. For some reason unstated in the court opinion, a restraining order had been issued against James prohibiting him from possessing firearms. That would be a problem.

When Special Agent Marsh of the California Department of Justice met with James concerning his guns, he found firearms galore and even a blowgun in the house. Blowguns are illegal in California. After a search warrant was issued, several assault weapons were located including a .50 caliber BMG (Browning Machine Gun) rifle. (That’s a serious gun).

ASSAULT WEAPON

James was charged and convicted by a jury on several counts of firearm violations including owning an assault weapon, a violation of California’s Assault Weapons Control Act of 1989, which defines “assault weapon” in sections 12280 and 12276.1 of the Penal Code. Check it out on our law library at www.portersimon.com. (Go to “Our Resources” tab and click “Legal Resources.”) There’s a link to “The Internet Law Library.”)

James was sentenced to two years in state prison.

SECOND AMENDMENT

Michael Eugene James appealed his conviction based on the Second Amendment to the Constitution of the United States: “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.”

James emphasized the literal wording of the Second Amendment, specifically “the right of the people to keep and bear arms shall not be infringed.” Indeed, there is nothing ambiguous about those words.

RIGHT TO BEAR ARMS

The latest and most definitive United States Supreme Court ruling on the Second Amendment is the case of the *District of Columbia v. Heller* decided in 2008.

Much to the joy of gun advocates, the Supreme Court held that the District of Columbia’s ban on handgun possession in a home violated the Second Amendment.

HISTORICAL CONTEXT

The Supreme Court explained in *District of Columbia* that the Second Amendment codified a pre-existing right of the individual “to possess and carry weapons in case of confrontation.” The Court noted, however, “The Second Amendment does not necessarily protect the right of citizens to carry arms for *any sort* of confrontation. In fact, the Second Amendment in *U.S. v. Miller* did not protect an individual’s right to possess an unregistered short-barreled shotgun.”

Here's the key per the *District of Columbia* ruling: "In the absence of any evidence tending to show that the possession or use of a [short-barreled shotgun] at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument."

In other words, the Supreme Court connected "the right to keep and bear arms" with the Constitution's accompanying language of "a well regulated militia," concluding that "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for unlawful purposes."

Considering the historical context of the enactment of the Second Amendment, the Court went on, "the right secured by the Second Amendment is not... a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose. Rather, it is the right to possess and carry weapons typically possessed by law-abiding citizens for lawful purposes such as self-defense. It protects the right to possess a handgun in one's home because handguns are a "class of 'arms' that is overwhelming chosen by American society" for the lawful purpose of self-defense."

CALIFORNIA COURT RULING

Three of the best justices on the Court of Appeal in Sacramento decided this new case with a well-reasoned opinion. Noting substantial evidence in the record of the destructive killing power of the .50 caliber BMG rifle (it can pierce armor, take down planes, even destroy buildings), the Court ruled that an assault weapon "has such a high rate of fire and capacity for firepower that its function as

a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings... these are not the types of weapons that are typically possessed by law-abiding citizens for lawful purposes such as sport hunting or self-defense; rather these are weapons of war.”

Just as the Second Amendment does not protect machine guns which are fully automatic rifles and pistols (pull the trigger once and bullets fly versus the more typical semi-automatic weapon, pull the trigger for each shot), the Court of Appeal, following *District of Columbia v. Heller* precedent, ruled that California’s Assault Weapons Control Act does not violate the Second Amendment to the United States Constitution.

EDITORIAL COMMENT

I own pistols and rifles that I use for target practice and hunting. The Second Amendment protects my right to possess those firearms.

In today’s world of gangs and terrorists, I’ve always believed there should be a limit to the type of weapon that is protected by the Constitution - such as machine guns and assault weapons. *People v. Michael Eugene James* does just that in California.

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