

Ninth Circuit Rules That "Good Cause"

Requirement for CCW Permit Does Not Violate the Second Amendment

On June 9, 2016, an "en banc" panel (11 justices, in an 8-3 decision) of the Ninth Circuit U.S. Court of Appeal held, in *Peruta v. County of San Diego*, that there is no constitutional right to carry a concealed weapon (CCW) in public.

As such, requiring one to state "good cause" when applying for a CCW permit does not violate the Second Amendment.

California law authorizes county sheriffs to establish and publish policies defining "good cause," and both Sheriffs and Chiefs of Police are authorized to issue such permits.

Facts

Both the Sheriffs of San Diego and Yolo Counties published policies and Appellants Edward Peruta, and Adam Richards who lived in Yolo County, sought such permits. Both applications were denied because they failed to "show good cause under the policy published in their county.

"Peruta, Richards and other plaintiffs - five residents of San Diego and Yolo Counties, as well as several gun rights organizations - brought two separate suits challenging, under the Second Amendment, the two counties' interpretation and application of the statutory good cause requirement under California law."

"The District Courts granted summary judgment in each case, holding that the counties' policies do not violate the Second Amendment. A divided three judge panel of this court reversed both decisions. The panel majority held in a published opinion in *Peruta* that San Diego's policy violated the Second Amendment."

The majority's view was that the Second Amendment required that "the states permit *some form* of carry for self-defense outside the home." Because California law required a showing of good cause to secure a CCW permit "and because open carry is also restricted, the panel held that the county's definition of good cause for a concealed carry license violates the Second Amendment."

Based on the holding in *Peruta*, the same decision was reached in the Yolo County matter and Yolo County Sheriff Ed Prieto petitioned for an en banc review in the *Richards* case. San Diego Sheriff Bill Gore did not. The Ninth Circuit granted en banc rehearing in both cases.

Court Discussion

California Penal Code 25400 generally prohibits the carrying of concealed firearms in public, whether loaded or unloaded. In addition, the law "generally prohibits carrying unloaded handguns openly on the person in a public place or on a public street, in either an incorporated city or a 'prohibited area' of an 'unincorporated area of a county.'"

There are numerous exceptions to those prohibitions - they do not apply to certain types of security guards, licensed hunters, persons transporting weapons between their residence and business, with other qualifiers and specifications. The prohibition also does not apply to persons keeping a handgun in their home or business, members of shooting clubs while at the club, etc. The plaintiffs argue that "the Second Amendment guarantees at least some ability of a member of the general public to carry firearms in public. Second, they contend that California's restrictions on concealed and open carry of firearms, taken together, violate the Amendment.

Third, they contend that there would be sufficient opportunity for public carry of firearms to satisfy the Amendment if the good cause requirement for concealed carry, as interpreted by the Sheriffs of San Diego and Yolo Counties, were eliminated. Therefore, they contend, the counties' good cause requirements for concealed carry violate the Amendment."

"While Plaintiffs base their argument on the entirety of California's statutory scheme, they allege only that they have sought permits to carry concealed weapons, and they seek relief only against the policies requiring good cause for such permits. **Notably, Plaintiffs do not contend that there is a free-standing Second Amendment right to carry concealed firearms.**" (Emphasis added.)

"Because Plaintiffs challenge only policies governing concealed carry, we reach only the question whether the Second Amendment protects, in any degree, the ability to carry concealed firearms in public. Based on the overwhelming consensus of historical sources, we conclude that the protection of the Second Amendment - whatever the scope of that protection may be - simply does not extend to the carrying of concealed firearms in public by members of the general public."

"The watershed case interpreting the [Second] Amendment is *District of Columbia v. Heller*, 554 U.S. 570 (2008). The plaintiff in *Heller* challenged a District of Columbia statute that entirely banned the possession of handguns in the home, and required that any lawful firearm in the home be 'disassembled or bound by a trigger lock at all times, rendering it inoperable.'"

"The Court struck down the challenged statute, concluding that the Amendment preserves the right of members of the general public to keep and bear arms in their homes for the purpose of self-defense: '[W]e hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.'"

The Court in *Heller* was careful to limit the scope of its holding. Of particular interest here, the Court noted that the Second Amendment has not been generally understood to protect the right to carry concealed firearms.

"*Heller* left open the question whether the Second Amendment applies to regulation of firearms by states and localities. The Court answered the question two years later, in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), holding that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment."

"In determining whether the Second Amendment protects the right to carry a concealed weapon in public, we engage in the same historical inquiry as *Heller* and *McDonald*. As will be seen, the history relevant to both the Second Amendment and its incorporation by the Fourteenth Amendment lead to the same conclusion: The right of a member of the general public to carry a concealed firearm in public is not, and never has been, protected by the Second Amendment."

The en banc court then, in detail, describes the history involving the carrying of weapons, going as far back as history in the 1300's. "Thus, by the end of the eighteenth century, when our Second Amendment was adopted, English law had for centuries consistently prohibited carrying concealed (and occasionally the even broader category of concealable) arms in public. The prohibition was continued in the English Bill of Rights, adopted in 1689, and was clearly explained by Granville Sharp in 1782, less than a decade before the adoption of the Second Amendment."

It then analyzes the gun laws in Colonial America and concludes: "We have found nothing in the historical record suggesting that the law in the American colonies with respect to concealed

weapons differed significantly from the law in England. Following the lead of the Supreme Court in both *Heller* and *McDonald*, we look to decisions of state courts to determine the scope of the right to keep and bear arms as that right was understood by the adopters of the Fourteenth Amendment."

The court notes that "an *overwhelming majority* of the states to address the question - indeed, after 1849, *all* of the states to do so - understood the right to bear arms, under both the Second Amendment and their state constitutions, as not including a right to carry concealed weapons in public."

Again, after an extensive discussion of case law regarding the carrying of concealed weapons, the court states: "Finally, and perhaps most importantly, in *Robertson v. Baldwin*, 165 U.S. 275 (1897), the United States Supreme Court made clear that it, too, understood the Second Amendment as not protecting the right to carry a concealed weapon."

The court concludes by stating that "***the Second Amendment right to keep and bear arms does not include, in any degree, the right of a member of the general public to carry concealed firearms in public.*** In so holding, we join several of our sister circuits that have upheld the authority of states to prohibit entirely or to limit substantially the carrying of concealed or concealable firearms." (Emphasis added.)

"Our holding that the Second Amendment does not protect the right of a member of the general public to carry concealed firearms in public fully answers the question before us. Because the Second Amendment does not protect in any degree the right to carry concealed firearms in public, any prohibition or restriction a state may choose to impose on concealed carry - including a requirement of "good cause," however defined - is necessarily allowed by the Amendment."

"The panel opinion in *Peruta*, if left intact, would have substantially impaired California's ability to regulate firearms. A key premise of the opinion was that the Second Amendment requires the states to 'permit *some form* of carry for self-defense outside the home.' Though California's statutory scheme permits many residents, in many contexts, to carry a firearm outside the home, it does not permit law-abiding residents of sound mind to do so without a particularized interest in self-defense."

HOW THIS AFFECTS YOUR AGENCY

The en banc ruling of the Ninth Circuit U.S. Court of Appeal totally affirms the right of California to reasonably regulate the carrying of firearms in public, including the requirement that the applicant articulate specific "good cause" for the permit.

As such, each Sheriff and Police Chief is authorized to establish such good cause based upon the facts specific to his or her jurisdictional needs. It is generally accepted that this case will ultimately be taken before the United States Supreme Court but until then, this ruling prevails and is binding.