

In the
United States Court of Appeals
for the Eighth Circuit

Appeal No. 11-3776

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

WILLIAM STEGMEIER,
Defendant/Appellant.

On Appeal from the United States District Court
For the District Of South Dakota - Sioux Falls
(CR 11-40038)

Brief of *Amicus Curiae*
Montana Shooting Sports Association
on behalf of the of the
Defendant/Appellant, William Stegmeier

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FRAP RULE 26.1 DISCLOSURE

The Montana Shooting Sports Association has no parent corporation. The Montana Shooting Sports Association is not a publicly held corporation and no corporate entity holds any stock in it whatsoever.

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BRIEF OF AMICUS CURIAE
IN SUPPORT OF PETITIONER¹

INTRODUCTION

Appellant William Stegmeier was charged with violating 18 U.S.C. § 922(d)(1), and 18 U.S.C. § 922 (d)(2). A trial was held, and, on October 7, 2011, the jury convicted Mr. Stegmeier on two counts: (1) knowing, or having reasonable cause to know, that that he was harboring a fugitive named Thomas Kelley, and, (2) providing a firearm to Mr. Kelley, a felon and fugitive. Mr. Stegmeier then filed a Motion for Acquittal based, in part, on his protections under the Second Amendment to the U.S. Constitution. Said motion was denied. His conviction under is under appeal.

INTEREST OF THE *AMICUS CURIAE*

The Montana Shooting Sports Association (hereinafter referred to as “MSSA”) is an eleemosynary entity. It is dedicated to the preservation and promulgation of the ideals of justice and fair play, as well as the right of individual citizens, who are the legatees of the Founding Fathers of the United States of America, to protect and defend themselves, their families, and their country against enemies, both foreign and domestic. As a part of

¹ It is hereby certified that the parties have consented to the filing of this brief; no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief and; no person other than amicus curiae, its members, or its counsel made a monetary contribution to its preparation or submission.

MSSA's expanding role of assistance to the legislature, and to the judiciary, MSSA seeks to watch and shepherd these entities to assure that the principles upon which this country was founded are not corrupted.

Further, MSSA wishes to call increased public attention to this case, and to like cases, brought by citizens of other regions of this country, and of the world. This is partly because the collateral consequences of an affirmed conviction in *Stegmeier* would be absurd, and would set the stage for future case law which would further the erosion of both civil and Constitutional rights in this country.

These rights, especially the Second Amendment's Right To Keep And Bear Arms, causes MSSA to be interested in this case, due to the case's potential impact on MSSA's constituency. The individual right to keep and bear arms is protected by the United States Constitution, and the constitutions of forty-four States. It has been deemed a fundamental right applicable to the States, by recent court decisions. MSSA has a substantial interest in ensuring that the Second Amendment is accorded its proper scope and deference, so as to protect the rights of all Americans.

MSSA believes that the United States Supreme Court's decision in *Dist. of Columbia v. Heller*, 554 U.S. 570, 635 (2008), which held that the Second Amendment protects an individual right to keep and bear arms, is

correct, that it is in concert with the Original Framers' intent, and that it should govern the ruling in *Stegmeier*.

STATEMENT OF THE FACTS

Mr. Stegmeier owned a motor home, which he used as temporary living quarters at his company's job sites. Tr. 252:23-253:3; 318:19-319:13. Mr. Stegmeier kept a firearm in the motor home, *Id.*, 202:1-12, for the purpose of self defense. *Id.*, 285:22-24. Mr. Stegmeier allowed his employee, Tom Kelley, to live in the motor home. *Id.*, 383:21-385:4. Mr. Stegmeier advised Mr. Kelley, upon Mr. Kelley's commencement of residence in the motor home, that there was a revolver in the closet. *Id.*, 385:5-21.

There was no evidence presented at trial that demonstrated that Mr. Kelley had ever touched the firearm, despite the efforts of law enforcement to find Mr. Kelley's fingerprints on both the firearm and on the ammunition for the firearm. *Id.*, 250:8-19. Further, there was no evidence that Mr. Stegmeier gave Mr. Kelley permission to touch or use said firearm.

There was conflicting testimony as to whether Mr. Stegmeier had reasonable cause to believe that Mr. Kelley was either a felon or a fugitive from justice at the time that Mr. Stegmeier allowed Mr. Kelley to live in his motor home where the firearm was stored. This includes Mr. Stegmeier's

testimony. Tr. 403-406. The jury found that Mr. Stegmeier did, in fact, have such knowledge, and it returned a conviction on 18 U.S.C. § 922(d)(1) and 18 U.S.C. § 922 (d)(2).

SUMMARY OF THE ARGUMENT

Mr. Stegmeier’s guilt, or innocence, is of vital importance. It is important to Mr. Stegmeier, to his family and friends, to his community, and to the spirit of Justice itself. Supremely important, however, is the consequences to practical and Second Amendment Constitutional issues which will be raised by an affirmation of his conviction by this Court. Further, the consequences of an affirmation leads to an absurd result, demonstrating that one or more premise(s) upon which such an affirmation rests must logically be false.

ARGUMENT

A. Stegmeier’s Conviction Should Be Reversed To Avoid An Illogical Precedent That Is Contrary To Established Constitutional Law

It is well settled that Courts sitting in appellate review are loath to overturn the factual findings of a lower court, cloaking themselves, rather, in the mantle of the sometimes erroneous premise that: “In determining the facts, the trial court ‘is in a unique position to assess the credibility of witnesses and weigh the evidence.’” *State v. Hansen*, 63 P.3d 650 (UT 2002).

In *Stegmeier*, however, there are issues of procedure, and the proper weight given to testimony therein, as well as regarding the jury instructions. It is the position of MSSA, however, that these issues are being addressed by other competent appellate writers, and, so, MSSA wishes to confine its arguments primarily to the issues of the absurd results to the ordinary citizen, and the consequences to the Second Amendment of the United States Constitution, should the Court affirm Stegmeier's conviction.

Stegmeier establishes a precedent that is nonsensical and intolerable. An argument may be proven false if that argument leads to an absurd result. This rule of logic is known as *reductio ad absurdum*.

Black's Law Dictionary states: "*Reductio ad absurdum*. Lat. In logic, the method of disproving an argument by showing that it leads to an absurd consequence." BLACK'S LAW DICTIONARY 5th ED. (West Publishing, 1979).

It would be untenable if a precedent were established to hold that a person may be prosecuted for the felony crime of transferring a firearm to a prohibited person if the firearm owner does not know that the other person is prohibited from firearm possession and the firearm owner simply allows that person to enter into the premises wherein the firearm owner lawfully possesses his firearm.

It would be a false premise to assume that every gun owner has a duty

to inquire as to the prohibited status of everyone whom is allowed into his/her home, automobile, and/or place of business, in the fear that they might be prosecuted for constructively transferring a firearm to such a prohibited person. It would be equally untenable to set a precedent that would require each and every firearm in the United States to be constantly under lock and key, in the fear that a prohibited person might actually see it, or be inadvertently left in the room with it unattended.

Imagine the tedious procedure of having each and every person who enters a police station, where firearms are a fact of life, being forced to submit to fingerprinting, and a records check, to protect the law enforcement officers there from being similarly prosecuted when the person is there simply to report a barking dog, or an automobile accident.

Imagine the quagmire of responsibilities and liabilities which could befall the sporting goods shop owner, when a prospective buyer asks to see a firearm, before the owner has had the opportunity to check the individual through the mandatory National Instant Criminal Background Check System, (NICS). The NICS form requires the serial number of a prospective gun sale before it can be submitted for check.

The *Heller* case, discussed above, stands for the precept that self defense is a “natural right,” which was not conferred by the Second

Amendment, but is a fundamental right of personhood. *Dist. of Columbia v. Heller*, 554 U.S. 570, 612 (2008). In *McDonald*, moreover, the Right To Keep and Bear Arms is defined as a “fundamental right,” that is held to be “necessary to our system of ordered liberty.” *McDonald v. City of Chicago*, 130 S.Ct. 3020, 3042, 177 L. Ed. 2d 894 (2010). In addition, the *Bena* Court held:

“*Heller* characterized the Second Amendment as guaranteeing “the right of *law-abiding, responsible* citizens to use arms in defense of hearth and home.” Scholarship suggests historical support for a common-law tradition that permits restrictions directed at citizens who are not law-abiding and responsible. The Court's discussion is consistent with the view that in “classical republican philosophy, the concept of a right to arms was inextricably and multifariously tied to that of the ‘virtuous citizen,’ ” such that “the right to arms does not preclude laws disarming the unvirtuous (i.e. criminals) or those who, like children or the mentally unbalanced, are deemed incapable of virtue. (Internal cites omitted).” *United States v. Bena*, 664 F.3d 1180, 1183-84 (8th Cir. 2011) (emphasis in original).

Mr. Stegmeier, was a “law-abiding, citizen,” a “peaceable citizen,” with no history of “crimes committed,” and he posed “no real danger of public injury.” Mr. Stegmeier was under no legal disability, and, as such, Mr. Stegmeier should benefit from the protections afforded by the Second Amendment to the United States Constitution, and the case law which supports it. For this reason alone, this Court should dismiss *Stegmeier*, or, at the very least, to reverse the trial court, and remand it for retrial.

B. If Mr. Stegmeier's Conviction Is Upheld It Will Operate As A Prior Restraint Against Lawful Gun Owners

Prior restraint describes both an action and a doctrine that has evolved concerning First Amendment intrusions by governmental entities. In short, the doctrine holds that the government may not prevent, in advance, the exercise of a constitutionally-reserved right, and, before resorting to a remedy of prior restraint (with narrow exceptions), a governmental entity must either avail itself of all alternate remedies (e.g., sequestering a jury, moving a trial, etc.), or it must rely upon punishing any abuse of rights after the incident in question.

Chief Justice Burger commented in *Nebraska Press Association v. Stuart*, "... prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Association v. Stuart*, 427 U.S. 539, 547 (1976).

“Prior Restraint. In constitutional law, the First Amendment, U.S. Const., prohibits the imposition of a restraint on a publication before it is published. The person defamed is left to his remedy in libel. *Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357. Three exceptions are recognized: a publication creating a "clear and present danger" to the country, *Schenck v. U.S.*, 249 U.S. 47, 52, 39 S.Ct. 247,

249, 63 L.Ed. 470; obscene publications, and publications which invade the zone of personal privacy.”

“A prohibited prior restraint is not limited to the suppression of a thing before it is released to the public; rather, an invalid prior restraint is an infringement upon a constitutional right to disseminate matters that are ordinarily protected by the First Amendment without there first being a judicial determination that the material does not qualify for First Amendment protection. *State v. I, A Woman - Part II*, 53 Wis.2d 102, 191 N.W. 2d 897, 902.”

Black's Law Dictionary 5th ed. (West Publishing, 1979)(bolding in original).

This rational and well-developed doctrine for the First Amendment seems also to apply to the individual rights protected under the Second Amendment, such as the individual right to keep a firearm in a person's home for self-defense.

If a law abiding firearm owner can be subjected to federal prosecution for the illegal transfer of a firearm to a prohibited person, on the basis that the firearm owner allows the prohibited person into his home or into his place of business, not knowing that the person is prohibited from firearm possession, then such potential prosecution will certainly chill the right to

keep arms that has been so recently affirmed by the U.S. Supreme Court in *D.C. v. Heller*. It would, in real effect, act as a prior restraint upon lawful use and possession of firearms, and upon constitutionally-protected conduct.

If such a precedent were established, any otherwise lawful firearm owner would need to dramatically change his, or her, conduct, or significantly curtail his, or her, exercise of the person's Second Amendment rights, to remain free from prosecution. How would a gun owner wishing to avoid a *Stegmeier*-like prosecution be required to change his, or her, conduct or behavior? Such a gun owner might have to divest himself, or herself, of firearms altogether, because of the inability to ascertain the prohibited or non-prohibited status of visitors to the gun owner's residence or business premises. Alternatively, the gun owner might have to keep his, or her, firearms locked away, and, therefore, unavailable for their primary and constitutionally-recognized purpose, self-defense. Any such curtailment, necessary to protect the gun owner from such prosecution, would certainly chill the exercise of a fundamental right, and would be, in First Amendment parlance, a prior restraint on the exercise of a fundamental right.

CONCLUSION

Clearly there is more at stake than just Mr. Stegmeier's innocence or guilt. Unfavorable precedent in this case will work as a prior restraint on

millions of law abiding gun owners. This Court should reverse Mr. Stegmeier's conviction, unless it is convinced that Mr. Stegmeier knew that Mr. Kelley was a fugitive and a prohibited person, and, unless it believes that Mr. Stegmeier intentionally transferred a firearm to Mr. Kelley, and that Mr. Kelley received it. To do otherwise is to accept the logical extensions of the precedent that would be established which would be both absurd and intolerable.

If this Court should feel compelled to uphold Mr. Stegmeier's conviction, MSSA asks that the Court make crystal clear in its Opinion that it is upholding the conviction on the grounds that the Court is sure and certain that Mr. Stegmeier knew that he was actually transferring a firearm to a prohibited person, and that the mere presence of an unidentified prohibited person at a lawful firearm owner's premises does not constitute an illegal transfer of a firearm under Stegmeier-applied federal law, and does not subject the firearm owner to a prosecution for an unknowing and unintended alleged illegal transfer.

Dated this 2nd day of March, 2012.

Respectfully submitted

s/Gary G. Kreep

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1. This brief complies with the type-volume limitation of FED. R. APP. P. 32(a)(7)(B) because, according to the word count function of Word 2010, this brief contains 2453 words, excluding the parts of the brief exempted by FED. R. APP. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type style requirements of FED. R. APP. P. 32(a)(6) because this brief is prepared in a proportionally spaced typeface using Microsoft Word 2010 Times New Roman 14 point font, footnotes in 10 point font.

Dated this 2nd day of March, 2012.

Respectfully Submitted,

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