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Supreme Court Upholds Gun Ban for "Domestic Violence" Offenders

In a 9-0 decision on March 26, the Supreme Court upheld current federal law banning anyone found guilty of domestic violence from possessing a gun. The decision furthermore served to strengthen existing law, by overturning previous district court rulings interpreting the law as applying only to those convicted of "violent use of force" and stating that the ban extended to anyone who had pled guilty to even a misdemeanor charge of domestic violence.

The case, *United States v. Castleman*, pertained to James A. Castleman, a Tennessee resident who had been charged in 2009 with selling firearms on the black market. Castleman was charged with violating the federal firearms law because in 2001 he had pled guilty in Tennessee to misdemeanor domestic violence, meaning he had "intentionally or knowingly caused bodily injury" to the mother of his child. The case against Castleman was brought by the Obama administration, which had been lobbied by advocates for battered women. An AP report noted that the Obama administration had argued that the lower court decisions would effectively nullify the federal gun ban in dozens of states where misdemeanor domestic violence laws don't specify the degree of force needed for conviction. The administration argued that this would undermine the intent of Congress, which was to prohibit the possession of firearms by anyone found guilty of even misdemeanor domestic violence.

Castleman's defense in the original case had argued that the federal gun prohibition did not apply to him because it defines a misdemeanor crime of domestic violence as the "use or attempted use of physical force" and his conviction had merely been for "intentionally or knowing causing bodily injury." Castleman argued that the sort of "physical force" described by the federal statute was of a more violent nature than that in the Tennessee statute to which he pled guilty, and therefore did not prohibit him from owning a gun.

The judge in the case ruled that the federal law requires "violent contact with the victim" and dismissed the case. The Sixth Circuit Court of Appeals agreed that violent physical force was necessary to prosecute under the federal law and upheld the dismissal.

Wednesday's ruling by the Supreme Court has reversed the appeals court and reinstated the charges against Castleman.

Delivering the opinion for the court, Justice Sonia Sotomayor said it was sufficient that Castleman pled guilty to having "intentionally or knowingly caused bodily injury to" the mother of his child in order for the federal charges against him to be upheld. (Sotomayor was joined in the opinion by Chief Justice John Roberts, and justices Anthony Kennedy, Ruth Ginsburg, Stephen Breyer, and Elena Kagan. Justices Antonin Scalia, Samuel Alito, and Clarence Thomas filed a separate concurrence — an opinion that concurred in part [and disagreed in part] with the majority opinion, but which — importantly — concurred in the final judgment.)

“Because Castleman’s indictment makes clear that physical force was an element of his conviction, that conviction qualifies as a ‘misdemeanor crime of domestic violence,’” Sotomayor said.

Much of the court’s opinion, as delivered by Sotomayor, revolved around exactly what the definition of “violence” is, according to the federal gun law — 18 U.S.C. §922(g)(9). She wrote: “The question before us is whether this conviction qualifies as ‘a misdemeanor crime of domestic violence.’ We hold that it does.”

The opinion also distinguished between violence as understood elsewhere in the law and “domestic violence” — a unique definition, in the court’s opinion, somewhat akin to “hate crimes.” Sotomayor wrote: “‘Domestic violence’ is not merely a type of ‘violence’; it is a term of art encompassing acts that one might not characterize as ‘violent’ in a nondomestic context.”

The opinion continued:

> Federal law elsewhere defines “domestic violence” in more limited terms: For example, a provision of the Immigration and Nationality Act defines a “‘crime of domestic violence’” as “any crime of violence (as defined by [18 U. S. C. §16])” committed against a qualifying relation. 8 U. S. C. §1227(a)(2)(E)(i). Our view that “domestic violence” encompasses acts that might not constitute “violence” in a nondomestic context does not extend to a provision like this, which specifically defines “domestic violence” by reference to a generic “crime of violence.”

Following from this argument, someone who strikes (or even pushes) a nonrelative might not be guilty of a “violent” act and would not be prohibited by federal law from owning a firearm, but someone who commits the same action against a family member forfeits his right to keep and bear arms. The court’s opinion further states that “we see no anomaly in grouping domestic abusers convicted of generic assault or battery offenses together with the others whom §922(g) disqualifies from gun ownership.”

Among those disqualified from gun ownership under the federal law are persons “convicted of a crime punishable by imprisonment exceeding one year” (i.e., felons), “a person who is an unlawful user of or who is addicted to a controlled substance,” and “a person who has been adjudicated as a mental defective or who has been admitted to a mental institution.” Therefore, someone involved in a minor physical altercation within a household that may defined as misdemeanor battery (e.g., gently pushing someone aside) — an act that might not even be considered a violent act if performed outside the household — is to be placed in the same category, insofar as gun rights go, as convicted felons, drug addicts, and mental patients.

Much of the preliminary language in the decision serves to bolster the final conclusion, painting a picture of rampant domestic violence — naturally attributable to the presence of guns in the home. For example:

> • “Recognizing that ‘firearms and domestic strife are a potentially deadly combination,” *United States v. Hayes*, 555 U. S. 415, 427 (2009), Congress forbade the possession of firearms by anyone convicted of “a misdemeanor crime of ‘domestic violence.’”
>
> • “This country witnesses more than a million acts of domestic violence, and hundreds of deaths from domestic violence, each year.”
>
> • “Domestic violence often escalates in severity over time, see Brief for Major Cities Chiefs Association et al. as Amici Curiae 13–15; Brief for National Network to End Domestic Violence et al. as Amici Curiae 9–12, and the presence of a firearm increases the likelihood that it will escalate to

homicide….”

• “When a gun was in the house, an abused woman was 6 times more likely than other abused women to be killed.” (Quote from “Assessing Risk Factors for Intimate Partner Homicide,” by Jacquelyn Campbell, et al.)

The above statements presume that the typical victim of domestic violence (as might be expected) is a woman. However, given that most men are physically more powerful than women, they can easily perpetrate physical violence against women by a variety of means, including fists, knives, and household objects. Should anyone with a history of “domestic violence” be banned from possessing all of these objects, as well?

In his separate concurring opinion, Justice Scalia noted some of the problems he had with the arguments made in favor of the decision:

> The offerings of the Department of Justice’s Office on Violence Against Women are equally capacious and (to put it mildly) unconventional. Its publications define “domestic violence” as “a pattern of abusive behavior … used by one partner to gain or maintain power and control over another,” including “[u]ndermining an individual’s sense of self-worth,” “name-calling,” and “damaging one’s relationship with his or her children.”

Scalia continued:

> Of course these private organizations and the Department of Justice’s (nonprosecuting) Office are entitled to define “domestic violence” any way they want for their own purposes — purposes that can include (quite literally) giving all domestic behavior harmful to women a bad name. (What is more abhorrent than violence against women?) But when they (and the Court) impose their all-embracing definition on the rest of us, they not only distort the law, they impoverish the language. When everything is domestic violence, nothing is. Congress will have to come up with a new word (I cannot imagine what it would be) to denote actual domestic violence.

Though well argued, it is unfortunate that Scalia’s objections did not extend beyond the semantic to the constitutional. Scalia (along with Robert, Alito, and Thomas) are often referred to as the High Court’s “conservative” justices, further highlighting the problem with the word “conservative.” For if these men were truly constitutionalist — in the strict sense — they would immediately recognize that Congress exceeded its authority in enacting §922(g)(9). The Second Amendment clearly states that “the right of the people to keep and bear Arms, shall not be infringed.” It does not say that this right shall not be infringed except in certain exceptional cases, such as if someone commits “acts that one might not characterize as ‘violent’ in a nondomestic context.”

The only remedy to this abuse of power is for the people elect a constitutionalist Congress that will not pass unconstitutional laws, as well as a constitutionalist president who will nominate constitutionalist justices to the Supreme Court.

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