

THE BULLPEN



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Official Publication of Western Missouri Shooters Alliance

July 2020

Florida Court Recognizes Popularity of Carry Permits, Rules Police Cannot Use Possession of a Gun as Sole Basis for Investigatory Stops

An appellate court in Florida recently decided that a police officer who sees a firearm when approaching a citizen is not permitted to rely exclusively on the possession of the firearm as the justification for an investigatory stop and search. Bearing arms is not only a lawful activity, it is “a specifically enumerated right” protected under both the state and federal constitutions. Taking into consideration the sheer number of persons in the state who are permitted to carry concealed weapons, this “potentially lawful activity cannot be the sole basis for a detention. If this were allowed, the Fourth Amendment would be eviscerated.”

The background of the ruling was a stop and arrest made by Deputy Beach of the Escambia County, Florida Sheriff's Office. He testified that while he was at a motel parking lot at 8:30 in the morning, he noticed a truck with a translucent cover over the license plate. A man was sitting in the driver's seat and the officer approached him to “discuss” the license plate cover. The man – Stanley Kilburn – got out of the truck holding a knife, but when he saw the officer he placed the knife inside the truck and raised his hands. Once Kilburn raised his hands, Deputy Beach was able to see the butt of a handgun sticking out of his waistband, and immediately detained and searched him. Deputy Beach did not testify as to how long the gun was visible other than to say that it “was concealed, but not really concealed.”

It was not until after Kilburn was handcuffed, secured in the police vehicle and given a Miranda warning that Deputy Beach questioned Kilburn and asked whether he had a concealed-weapons license. He did not, and was charged with unlicensed carrying of a concealed weapon.

While open carry is generally not permitted in Florida, a person licensed to carry concealed and carrying a firearm in a concealed manner may “briefly and openly display the firearm to the ordinary sight of another.”

Under long-standing United States Supreme Court precedent, *Terry v. Ohio*, “both a reasonable suspicion that criminal activity is afoot and a reasonable suspicion that the subject might be armed” is required before a law enforcement officer may perform a “stop-and-frisk” search. Kilburn sought to suppress the evidence of the gun, claiming the officer had insufficient cause to detain him and that the officer’s actions were accordingly illegal.

Deputy Beach specifically testified at the trial court hearing that he did not have reasonable suspicion of any criminal activity by Kilburn (past, present or impending); the sole cause of the detention and arrest was the partially visible firearm.

The trial court looked to two previous but inconsistent cases for guidance. In the first, *Regalado v. State* (Fla. Dist. Ct. App. 2010), the court held that the police could not detain a person solely on the ground that he possessed a gun. In the latter case, *Mackey v. State* (*Mackey I*) (Fla. Dist. Ct. App. 2012), the court ruled that, even without reasonable suspicion, an officer could stop someone based on mere possession of a gun until the officer could confirm the gun was legally carried.

The trial court in this case opted to follow the *Mackey* decision – that even without a reasonable suspicion that a crime had been or was about to be committed, an officer should not be prohibited from detaining anyone seen with a firearm. The appellate brief filed by Kilburn noted that one of the findings the trial court made in support of its decision “was that most people who carry a concealed firearm probably do not have a permit.” However, there was “no competent substantial evidence to support this finding, and in fact, between 1999 and 2016 the number of permit holders has increased over 400 percent...”

On appeal, a divided panel of the District Court of Appeal of Florida reversed, finding that the trial court ruling was “contrary to law.”

Simply possessing a firearm in public was insufficient to create the necessary reasonable suspicion for an investigatory stop by police, because it was legal to carry a firearm in Florida with a concealed-weapons license and the person’s status as a licensee could not be determined by mere observation. The deputy confirmed “that he had no other reason for seizing the appellant other than the fact that he was armed,” and did not ask about a license until after Kilburn has been arrested and taken into custody. There was no evidence that Kilburn’s gun was intentionally displayed in an angry or threatening manner.

The appellate court also relied on a change in the law on the “unlicensed carrying” crime that occurred after the *Regalado* and *Mackey* decisions. The amendment clarified that the prohibition did not apply to anyone lawfully carrying a concealed firearm, either pursuant to a license or while evacuating an area during a mandatory state of emergency order. This “statutory change made it even more clear that a law enforcement officer may not use the presence of a concealed weapon as the sole basis for seizing an individual.”

A critical factor in the court’s decision, though, was the huge number of persons licensed to carry concealed firearms in the

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...dedicated to the restoration of the inalienable right to keep and bear arms as guaranteed by the 2nd Amendment

The Alliance is a regionally-based, grass-roots organization that seeks to:

1. Counter the designs of malicious legislators.
2. Confront the media's twisted portrayals of gun rights issues.
3. Politicize and activate gun owners in defense of their rights.
4. Acquaint the public with the true nature of the Second Amendment.
5. Network with other pro-gun groups to coordinate local, state and national strategies.
6. Train people in basic firearm safety and handgun defense.
7. Sponsor and support pro-gun legislation
8. Make politicians aware that gun owners are awakening from their accustomed apathy and
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COMING EVENTS

WMSA

General Membership Meeting

7:00 PM

July 28, 2020

Sept. 22, 2020

Npv. 24, 2020

Bass Pro Conservation Room
Independence, MO

• • •

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FLORIDA (Continued from page 1)

state. Unlike the trial court's speculations, the appellate court determined that as of January 2020, over two million residents were licensed to carry concealed weapons, representing over 13% of Floridians over 21 years old. Even so, this number did not include those entitled to carry without a license, such as law enforcement officers, and those carrying under a different license (private investigators and security guards). As emphasized by the court, these numbers meant that "approximately one out of every seven persons over the age of twenty-one may lawfully carry a concealed weapon in Florida. The thought that these millions of people are subject to seizure by law enforcement until their licenses are verified is antithetical to our Fourth Amendment jurisprudence...No court would allow law enforcement to stop any motorist in order to check for a valid driver's license."

The appellate court granted Kilburn's motion to suppress and reversed his conviction. (One dissenting judge would have allowed the evidence and let the conviction stand.)

The decision is Kilburn v. State, No. 1D18-4899, 2020 WL 2781864 (Fla. Dist. Ct. App. May 29, 2020),

Supreme Court's Inaction Frustrates Second Amendment Supporters, Emboldens Anti-gun Activists

Gun owners are by now used to being disappointed with the U.S. Supreme Court's refusal to uphold their rights or even to defend its own Second Amendment precedents. But the court's neglect reached a new low last Monday, with its sweeping decision to deny review of the many Second Amendment cases pending on its docket.

At issue were 10 petitions that offered the court opportunities to clarify the most important and contentious issues in the modern Second Amendment landscape, controversies that in some cases have led to radically different approaches by public officials and the lower courts.

The high court, however, passed on all of them. The Supreme Court's most recent "punt" prompted outrage not only from pro-gun activists, but by members of the court itself who remain committed to upholding Second Amendment rights.

Justice Clarence Thomas, who has long criticized his colleagues' neglect of the Second Amendment, chose the NRA-backed case of Rogers v. Grewal to renew his objections to what he characterized as "the Court simply look[ing] the other way" on infringements of the right to keep and bear arms.

The Rogers petition asked the Supreme Court to review a decision from the Third Circuit that upheld New Jersey's "may-issue" concealed carry regime, effectively allowing New Jersey officials to deny ordinary citizens the right to bear arms in public for self-defense.

In a 19-page dissent from the court's refusal to hear the case, Thomas argued that the court should have granted review, that the Second Amendment protects a right to bear arms in public for self-defense, and that New Jersey's "may-issue" regime violates that right. Trump appointee Justice Brett Kavanaugh joined Thomas in dissent.

Thomas wrote that "many courts have resisted our decisions in Heller and McDonald" by ignoring its analytical approach and substituting a "made up" test with no basis in the Second Amendment or the Supreme Court's precedents on that provision. Moreover, he stated, the lower courts' application of that test "has yielded analyses that are entirely inconsistent with Heller," which "cautioned that '[a] constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all'".

"[W]e explicitly rejected the invitation to evaluate Second Amendment challenges under an 'interest-balancing inquiry, with the interests protected by the Second Amendment on one side and the governmental public-safety concerns on the other,'" Thomas reminded the court. "But the application of the test adopted by the courts of appeals has devolved into just that," he said.

While bystanders can only speculate on the reason the court continues to "look the other way" on the Second Amendment, at least two clear implications for gun owners emerge from this latest development.

One, they must continue to support President Trump's unprecedented efforts to seat fearless and unapologetic constitutionalists to all levels of the federal courts.

Second, they must redouble their activism in the political sphere to ensure that if the courts too often won't respect their rights, their elected officials will.

As always, your NRA will be at the forefront of these and other efforts to protect the right to keep and bear arms.

Missouri: Legislature Adjourns Sine Die

On May 30th, the Missouri Legislature adjourned sine die from its 2020 legislative session. Thanks to the efforts of law-abiding citizens and pro-Second Amendment lawmakers, extreme "red flag" gun seizure legislation did not make it out of committee. Unfortunately, the COVID-19 crisis stalled efforts to pass legislation to ensure citizens have the right to self-defense while on public transit.

Though the legislative session is over, it is as critical as ever for NRA members and Second Amendment supporters to remain active and engaged. **The outcomes of the August 4th Primary Election and the November 3rd General Election will decide if the Missouri Legislature will have a pro-Second Amendment majority in 2021.** Please stay tuned to www.nraila.org and your email inbox.



LIBERTY NOTES

By Kevin L. Jamison

It is a Good Day for Liberty.

The Missouri Sport Shooting Association, the NRA state affiliate, is in great need of a Newsletter Editor. MSSA puts out a newsletter four times a year. We all complain about the fake news of the mass media. Here is a chance to fight back.

TV cartoons are becoming politically correct. Guns have been removed from Yosemite Sam, a cowboy caricature. Elmer Fudd, the supposed hunter, will no longer pursue Bugs Bunny with a shotgun. He will use a scythe. Road Runner and Coyote will continue to attack each other with dynamite and anvils.

The Kansas City Star is going to do a special investigative report on "gun violence;" no other violence need apply. Through a grant from Report for America the Star hired three young journalism graduates to investigate "gun violence." In every article about a shooting the Star is promoting this project. They ran a quarter page article about it. The project will focus on causes and solutions to "gun violence." In my experience when someone starts out by stating the problem is gun violence, they will conclude that the cause is guns and the solution is no guns. I'd like to know if the investigators talk to any of our people. I would be surprised, but I'd like to know. The Star says that anyone who wants to participate should contact them at reportforamerica.org. I intend to participate. The more of us involved the better.

I've read *The Plots Against the President*, by Sally Denton. It recounts the many plots against President Franklin Delano Roosevelt. Many of the plots consisted of disagreeing with the President. It was an age of conflict. Fascists, communists and populists competed for power; and so did President Roosevelt. Of some note was an assassination attempt on the President by an anarchist. He killed the mayor of Chicago instead. Of great interest is the supposed "Wall Street" coup attempt of 1934. The story is that certain rich men were outraged at President Roosevelt taking us off the gold standard and replacing it with paper money. They seem to have had other disputes with the President as well. One of the plotters approached Retired Marine Corp General Butler to lead an army of veterans to take over the White House in a "peaceful military takeover." It was claimed that the President was too ill to continue as President and he would be relegated to ceremonial duties. General Butler was a popular figure. He held two Medals of Honor and was extremely popular with veterans who were demanding early payment of promised bonuses. The supposed plan was that General Butler would lead thousands of veterans to Washington D.C., arm them and lead them against the White House. The rest of the country was presumed to fall in behind. This was little better than John Brown's raid on Harper's Ferry to free slaves nearly a hundred years before. The veterans knew and respected General Butler while the slaves had never heard of John Brown. The plan depended on there being no opposition; not even from President Roosevelt, who was a good shot. It also depended on General Butler going along. The General was famous for being a fiery critic of Wall Street. He blamed Wall Street for using "his Marines" in various small wars. In his view Marines died to make tycoons richer. For ideology alone, he would be the last person Wall Street would trust. Still, there is the absolutely stupid factor. It is possible that the conspirators thought that General Butler would go along in order to have the veterans' bonuses backed, by gold instead of paper. People have convinced themselves of unlikely factoids because they desperately want them to be true. Perhaps General Butler lied, but no one seems to believe that alternative. There were Congressional hearings which found that there was a conspiracy, but not one that could be pinned on anyone an extra ordinary conspiracy indeed.

I think that the Wall Street plot illustrates the need for an armed citizenry. It may have been little more than delusional cocktail party chatter. However, it did exist. It depended on minimal resistance. The more points of resistance, the better the chance that one critical member of the coup will not fire on fellow Americans the coup will fail. In the alternative fellow Americans will shoot them dead. A coup requires seizure of many critical points in a short period of time. Delays at few points can result in failure. Long ago I read a book called *Coup d'Etat*, it was very clear on this point. I am tired of these masks. It is difficult to drink coffee through them.

Canada has banned more guns. Years ago, their government said that if they registered and banned some guns that would fix all of their problems. It was a lie then and the result has been more bans. One report is that 12 and ten gauge shotguns have been banned. I have not confirmed this yet.

There are repeated reports that Joe Biden has a ten to 14 per cent lead over President Trump. Given Joe Biden's reputation for mental problems and his recent scandal for sexual abuse I find this incomprehensible.

LIBERTY ((Continued on page 5)

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LIBERTY (*Continued from page 4*)

There are reliable reports that the democrats and Joe Biden have raised more money than President Trump in this quarter. Given the product the democrats are pushing I am astonished people are investing.

The Western Missouri Shooters Alliance has unanimously endorsed President Trump for re-election. There was no discussion. Even if frustrated by some of the President's policies, he has done things for us. As president Joe Biden will do things **to** us. He has already appointed Beto O'Roark to be his "gun czar." This is the guy who boasted that he would take our guns. If you cannot vote for the President, please vote against the usual suspects. It is not enough to vote for a minority party. If that is not possible; vote to keep Republican control of the Senate. President Trump has gotten a record 200 conservative judges approved through the Senate. He promised this when he ran for his first term. This gives us hope for cases coming up through the legal system.

The riots have seen police ordered to retreat before the rioters. A Minneapolis police station was burned. Seattle has a famous occupied zone. Seattle City officials unlocked City Hall and the police station for the rioters. Police were told to retreat. A six-block area was surrendered to the rioters. A self-described "warlord" took charge of security. There are reports of extortion, three murders and rape. Ambulance and fire department have not been allowed in the area.

A founder of Black Lives Matter told a television audience that if the group does not get all of their demands they would "burn the system down." When asked if this was figurative or literal he replied that "it's a matter of interpretation." He declined to do the interpretation.

Given this timeline millions of Americans have bought guns and ammunition. A large number of these people are new gun owners. I saw a message today from a guy showing a picture four years old wearing an anti-gun T-shirt. Now he is a gun owner. Some of these new gun owners may still have residual beliefs we find distasteful. They may still believe that President Obama was a great president and Hillary Clinton would have been great. We must tolerate these eccentricities as they move into our culture. In Viet Nam, Kenya and elsewhere anti-guerrilla forces captured guerrillas after prying red-hot weapons out of their hands. They converted some of these men into effective anti-guerilla fighters. It can be done. It takes patience.

We shall overcome.

PRESIDENT'S CORNER

I MET AT LADY

K. L. Jamison

I met a lady; extraordinary enough. The fact that I met her at a concealed carry class is not so extraordinary. Many women take these classes. By the accounts of instructors, they learn faster than men. The extraordinary thing was that she had previously been a member of Moms Demand Action, a notorious anti-gun right group.

She had joined the group because she had lost family members to "gun violence." She had been attracted to the group because of its chant of "gun violence." Talking to other members she found that none had lost family to any kind of violence. They told her they were not doing anything at home, and this was something to do. She started to wonder if they had any concern about other forms of violence. She had left the group because they kept telling her things she knew were not true. Her grandfather had guns and she had some exposure to the culture. They kept telling her that background checks had to be a law. Of course, we have had computerized background checks since 1992 and it was the NRA's idea. She asked how they can tell such lies. I work in the legal system and I knew the answer, they force air over their vocal cords. The lie supports their position and they have told it long enough to be believed. A different woman told me that there was a gun show loophole in the law because private persons can sell each other guns in private sales; some of them in gun shows. This was dishonest but it fit her superstition.

I was very happy to meet a lady who had abandoned the superstitions of the usual suspects. Even more that she was taking a concealed carry class. I invited her to join our organization. With luck she can bring over other Moms whose eyes have been opened.

After the virus and the recent riots, a great many new gun owners have crowded gun shops. We need to reach out to these new owners to teach them the safety rules and to participate in protecting our rights. If you see one in a gun shop or better yet, on the range, offer your experience.

Who knows? Perhaps I will meet that extraordinary lady.

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- 3) Politicize and activate gun owners in defense of their rights.
- 4) Acquaint the public with the true nature of the Second Amendment.
- 5) Network with other pro-gun groups to coordinate local, state and national strategies.
- 6) Train people in basic firearm safety and handgun defense.
- 7) Sponsor and support pro-gun legislation.
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703-321-8585

Jews for the Preservation of Firearms Ownership
www.JPFO.org
262- 673-9745

The National Rifle Association
www.nra.org
800-672-3888

The Second Amendment Foundation
www.saf.org
425- 454-7012

Gateway Civil Liberties Alliance
<http://www.gclatl.org/>
866 385-GUNS (4867)

Missouri Sport Shooting Association
www.missourisportshooting.org/

Western Missouri Shooters Alliance
www.wmsa.net

Missouri Carry
Online Forum
www.missouricarry.com

Arming Women Against Rape and Endangerment
www.aware.org
877-672-9273

Women Against Gun Control
www.wagc.com
801-328-9660

NewsMax.com
www.newsmax.com

The Washington Times
www.washtimes.com

The London Telegraph
www.telegraph.co.uk

The Drudge Report
www.drudgereport.com