

CALIFORNIA COURT OF APPEAL, SIXTH APPELLATE DISTRICT

People v. Gomez

People v. Gomez · No. H051210 · Decided April 7, 2025

SUMMARY

The California Court of Appeal held that Penal Code section 29800, subdivision (a)(1) requires the prosecution to prove that a flare gun was designed to be used as a weapon to qualify as a firearm. Because the evidence was insufficient to establish that requirement, the court vacated Gomez’s conviction for possession of a firearm by a felon and remanded for resentencing. The court rejected Gomez’s Second Amendment challenge to California’s prohibitions on felons’ possession of firearms and ammunition.

CASE DETAILS

COURT	California Court of Appeal, Sixth Appellate District
WRITING FOR THE COURT	Greenwood, P. J.; Grover, J.; Wilson, J.
JURISDICTION	California Court of Appeal, Sixth Appellate District
DECIDED	April 7, 2025
DOCKET	H051210
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	After a bench trial, the Monterey County Superior Court convicted Gomez of stalking, criminal threats, failure to file a change of address, possession of a firearm by a felon, possession of ammunition by a felon, and disobeying a court order. Gomez appealed, challenging the sufficiency of the evidence supporting the firearm-possession conviction and the facial constitutionality of the firearm- and ammunition-possession statutes under the Second Amendment.
STANDARD OF REVIEW	The court reviewed the sufficiency of the evidence to determine whether, viewing the entire record in the light most favorable to the judgment, any rational trier of fact could have found the essential elements beyond a reasonable doubt. The constitutionality of the challenged statutes was reviewed de novo.
PRECEDENTIAL VALUE	Published California Court of Appeal opinion; precedential within the scope permitted by California law.
PARTIES	Emiliano Gomez v. The People

TOPICS

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QUESTIONS PRESENTED

1. Whether substantial evidence supported Gomez's conviction for possession of a firearm by a felon under Penal Code section 29800, subdivision (a)(1), where the alleged firearm was a flare gun and the prosecution did not prove that it was designed to be used as a weapon.
2. Whether Penal Code sections 29800, subdivision (a)(1), and 30305, subdivision (a)(1), facially violate the Second Amendment.

HOLDINGS

1. To prove a violation of Penal Code section 29800, subdivision (a)(1), the prosecution must establish that the possessed device, or its frame or receiver, satisfies the definition of firearm in section 16520, subdivision (a), including that it was designed to be used as a weapon. Evidence that the flare gun was operable, capable of expelling a projectile by combustion, and had an intact frame or receiver was insufficient without evidence that it was designed to be used as a weapon.
2. Penal Code sections 29800, subdivision (a)(1), and 30305, subdivision (a)(1), do not facially violate the Second Amendment.

KEY QUOTATIONS

“Although the police officer testified that “a flare gun” is a firearm, “per the Penal Code,” nothing in California statutes or caselaw defines a flare gun as a firearm as a matter of law.” (at 7)

“The exclusion of section 29800 from section 16520, subdivision (c)—and likewise, the omission of language including devices designed for emergency or distress signaling purposes from subdivision (a)—support the conclusion that a “firearm” under section 29800 must be a device designed to be used as a weapon.” (at 10)

“Absent evidence showing otherwise, we cannot conclude a reasonable factfinder could infer beyond a reasonable doubt that the flare gun in this case was designed to be used as a weapon.” (at 15)

“Accordingly, for the reasons set forth in Anderson, we conclude section 29800, subdivision (a)(1) and section 30305, subdivision (a)(1) do not violate the Second Amendment.” (at 19)

FACTUAL BACKGROUND

Police found an unloaded Orion flare gun in an unlocked storage space associated with Gomez, along with ammunition, holsters, and other items. An officer testified that the flare gun appeared operable, could fire a projectile through a barrel by combustion, and had an intact frame or receiver, but the prosecution introduced neither the flare gun nor photographs of it and presented no evidence that it was designed to be used as a

weapon. Gomez had prior felony convictions and was convicted of stalking, criminal threats, and ammunition possession, among other offenses.

PROCEDURAL HISTORY

The prosecution charged Gomez with seven counts. The trial court acquitted him of possession of body armor but found him guilty of the other six counts and found the bail-related allegations true. It imposed an aggregate four-year state-prison sentence. The Court of Appeal reversed the judgment, vacated the conviction on count 5, and remanded for resentencing while rejecting Gomez's Second Amendment challenges.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand the matter to the trial court for resentencing after vacating Gomez's conviction on count 5 for possession of a firearm by a felon.

CASES CITED

- People v. Zamudio, 43 Cal. 4th 327, 357 (2008)
- People v. Maury, 30 Cal. 4th 342, 403 (2003)
- People v. Jimenez, 35 Cal. App. 5th 373, 392 (2019)
- People v. Lawson, 189 Cal. App. 3d 741, 748 (1987)
- Medley v. Runnels, 506 F.3d 857, 864 (9th Cir. 2007)
- People v. Braden, People v. Braden, 14 Cal. 5th 791, 804 (2023)
- Dyna-Med, Inc. v. Fair Employment & Housing Commission, 43 Cal. 3d 1379, 1386-1387 (1987)
- People v. Arnold, 145 Cal. App. 4th 1408, 1414-1416 (2006)
- People v. Nelums, 31 Cal. 3d 355, 358 (1982)
- Howard Jarvis Taxpayers Assn. v. Padilla, 62 Cal. 4th 486, 514 (2016)
- Make UC a Good Neighbor v. Regents of University of California, 16 Cal. 5th 43, 58 (2024)
- State v. Glover, 952 N.W.2d 190, 194 (Minn. 2020)
- Commonwealth v. Sampson, 383 Mass. 750, 754 (1981)
- Mars Equipment Corp. v. United States, 437 F. Supp. 97, 100 (N.D. Ill. 1977)
- State v. Rackle, 55 Haw. 531, 537 (1974)
- Morris v. Commonwealth, 269 Va. 127, 132 (2005)
- Quesenberry v. Commonwealth, 41 Va. App. 126, 129 (2003)
- Emmons v. State, 546 So. 2d 69, 71 (Fla. Dist. Ct. App. 1989)
- People v. Albillar, 51 Cal. 4th 47, 60 (2010)
- New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. 1, 24 (2022)

- United States v. Rahimi, 602 U.S. 680, 690, 693, 698-700 (2024)
- People v. Anderson, 104 Cal. App. 5th 577, 584, 587-600 (2024)
- District of Columbia v. Heller, 554 U.S. 570, 592, 626 (2008)
- McDonald v. City of Chicago, 561 U.S. 742, 786, 791 (2010)
- People v. Richardson, 108 Cal. App. 5th 1203 (2025)
- People v. Ceja, 94 Cal. App. 5th 1296, 1301 (2023)
- People v. Odell, 92 Cal. App. 5th 307, 317 (2023)
- People v. Alexander, 91 Cal. App. 5th 469, 478 (2023)
- People v. Bey, 108 Cal. App. 5th 144 (2025)
- Tobe v. City of Santa Ana, 9 Cal. 4th 1069, 1084 (1995)
- California School Boards Assn. v. State of California, 8 Cal. 5th 713, 723-724 (2019)
- California Teachers Assn. v. State of California, 20 Cal. 4th 327, 338 (1999)
- In re Sheena K., 40 Cal. 4th 875, 888-889 (2007)

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