

DISTRICT OF COLUMBIA COURT OF APPEALS

Gamble v. United States

30 A.3d 161 (D.C. 2011) · Decided October 27, 2011

SUMMARY

The District of Columbia Court of Appeals affirmed Bashawn Gamble’s conviction for carrying a pistol without a license. The court held that the Second Amendment does not protect carrying a concealed firearm in public and concluded that the District’s concealed-carry prohibition was constitutionally applied to Gamble. The court also rejected his broader challenge to the statute and denied the requested remand.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Fisher, Associate Judge; Fisher; Reid; Washington
JURISDICTION	District of Columbia
DECIDED	October 27, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellant entered a conditional guilty plea to carrying a pistol without a license after the trial court denied his motion to dismiss on Second Amendment grounds. He appealed the denial of that motion.
STANDARD OF REVIEW	The constitutionality of a statute is reviewed de novo.
PRECEDENTIAL VALUE	Published opinion; binding District of Columbia Court of Appeals precedent.
PARTIES	Bashawn Gamble v. United States

TOPICS

- second amendment
- constitutional law
- criminal procedure
- appellate procedure
- standard of review

PRACTICE AREAS

- constitutional law
- criminal law
- firearms regulation
- appellate procedure

QUESTIONS PRESENTED

1. Whether the Second Amendment protects carrying a concealed firearm in public outside the home or place of business.
2. Whether the District of Columbia's statute prohibiting carrying a pistol without a license was unconstitutional as applied to Gamble's concealed carrying of an unlicensed pistol.
3. Whether the statute was facially or overbreadth-invalid because it also prohibited open carrying, and whether invalidity of any open-carry provision would affect Gamble's concealed-carry conviction.

HOLDINGS

1. The Second Amendment does not confer a right to carry and possess a concealed firearm in public.
2. The District of Columbia's carrying-a-pistol-without-a-license statute was constitutionally applied to Gamble's carrying of a concealed, unlicensed pistol on a public street.
3. The court did not need to decide the constitutionality of the statute's open-carry provision because any such issue would not affect Gamble's conviction for carrying a concealed weapon.

KEY QUOTATIONS

“We need not in this case decide whether, and under what circumstances, the Second Amendment right extends outside the home. It is sufficient to hold that appellant’s conviction for carrying a concealed pistol without a license on the streets of the District of Columbia did not violate his constitutional right to keep and bear arms.” (30 A.3d at 164)

“In sum, there is no Second Amendment right to carry and possess a concealed firearm in public. Consequently, the CPWL statute was constitutionally applied to Mr. Gamble’s carrying of an unlicensed semi-automatic pistol in his jacket pocket on the streets of the District of Columbia.” (30 A.3d at 169)

FACTUAL BACKGROUND

At approximately 9:00 p.m., Metropolitan Police officers saw Bashawn Gamble attempting to hide behind a tree while holding what appeared to be an open container of alcohol. Gamble fled when officers approached and was later apprehended. A search incident to arrest revealed a loaded .380 semi-automatic pistol and a spare magazine in his jacket; he did not have a District of Columbia license to carry a firearm. The firearm was carried concealed on a public street, outside Gamble's home or place of business.

PROCEDURAL HISTORY

Metropolitan Police officers arrested Gamble after he fled while carrying a loaded concealed pistol and additional ammunition. A grand jury indicted him for carrying a pistol without a license, possession of an unregistered firearm, and unlawful possession of ammunition. After *District of Columbia v. Heller* was decided, Gamble moved to dismiss; the trial court denied the motion. Gamble entered a conditional guilty plea to the carrying-without-a-license charge, the government dismissed the remaining charges, and the District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- District of Columbia v. Heller, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008)
- Plummer v. United States, 983 A.2d 323, 325, 336, 339-40 (D.C. 2009)
- Mack v. United States, 6 A.3d 1224, 1235-36 (D.C. 2010)
- United States v. Hart, 726 F. Supp. 2d 56, 60 (D. Mass. 2010)
- Nunn v. State, 1 Ga. 243 (Ga. 1846)
- State v. Chandler, 5 La. Ann. 489, 489-90 (1850)
- Robertson v. Baldwin, 165 U.S. 275, 281-82 (1897)
- Heller v. District of Columbia, 2011 WL 4551558, at *5, *28 (D.C. Cir. Oct. 4, 2011)
- People v. Yarbrough, 169 Cal. App. 4th 303, 86 Cal. Rptr. 3d 674, 682-83 (2008)
- Knight v. State, 42 Kan. App. 2d 893, 218 P.3d 1177, 1189-90 (2009)
- People v. Dykes, 46 Cal. 4th 731, 95 Cal. Rptr. 3d 78, 209 P.3d 1, 43-44 (2009)
- Dorr v. Weber, 741 F. Supp. 2d 993, 1004-06 (N.D. Iowa 2010)
- Kachalsky v. Cacace, 2011 WL 3962550, at *20 (S.D.N.Y. Sept. 2, 2011)
- Smith v. United States, 20 A.3d 759, 764 (D.C. 2011)
- Riddick v. United States, 995 A.2d 212, 221-22 (D.C. 2010)
- Sabri v. United States, 541 U.S. 600, 609-10 (2004)
- German v. United States, 525 A.2d 596, 604-05 (D.C. 1987)
- Wooden v. United States, 6 A.3d 833, 837 n. 26 (D.C. 2010)
- RDP Development Corp. v. District of Columbia, 645 A.2d 1078, 1082-83 n. 18 (D.C. 1994)
- Gary v. United States, 499 A.2d 815, 821 (D.C. 1985) (en banc)
- United States v. Pritchett, 152 U.S. App. D.C. 307, 308-10, 470 F.2d 455, 456-58 (1972)
- Lewis v. Hotel & Restaurant Employees Union, Local 25, 727 A.2d 297, 301 (D.C. 1999)
- Olevsky v. District of Columbia, 548 A.2d 78, 81 (D.C. 1988)
- McDonald v. City of Chicago, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010)