

SUPREME COURT OF NEW HAMPSHIRE

DuPont v. Nashua Police Department

167 N.H. 429 (2015) · Decided February 20, 2015

SUMMARY

The New Hampshire Supreme Court reviewed the revocation of Gregory DuPont’s license to carry a loaded pistol or revolver and the denial of renewal of his armed security guard license. The court interpreted 18 U.S.C. § 921(a)(20), holding that the Second Amendment right to keep and bear arms may constitute a civil right whose restoration can implicate the federal firearms-possession prohibition. The court rejected the lower courts’ reasoning and reversed and remanded.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                        |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of New Hampshire                                                                                                                                                                                                                                                                                                         |
| WRITING FOR THE COURT | Hicks, J.; Dalianis, C.J.; Conboy, J.; Lynn, J.; Bassett, J.                                                                                                                                                                                                                                                                           |
| JURISDICTION          | New Hampshire                                                                                                                                                                                                                                                                                                                          |
| DECIDED               | February 20, 2015                                                                                                                                                                                                                                                                                                                      |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | Consolidated appeals from an order of the Circuit Court affirming the revocation of DuPont's New Hampshire license to carry a loaded pistol or revolver and an order of the Superior Court denying preliminary injunctive relief in DuPont's action to enforce a settlement concerning his armed security guard license.               |
| STANDARD OF REVIEW    | For the firearm-license appeal, the court deferred to the trial court's factual findings when supported by the record and reviewed the application of law to facts de novo. For the preliminary-injunction ruling, the court reviewed for legal error, an unsustainable exercise of discretion, or clearly erroneous factual findings. |
| PRECEDENTIAL VALUE    | Published New Hampshire Supreme Court opinion; precedential.                                                                                                                                                                                                                                                                           |
| PARTIES               | Gregory DuPont v. Nashua Police Department, City of Nashua, Peter McDonough, Sean Haggerty, Christopher B. Casco, John J. Barthelmes                                                                                                                                                                                                   |

TOPICS

- statutory interpretation
- second amendment
- supremacy clause
- constitutional law
- contracts

## PRACTICE AREAS

constitutional law

firearms law

civil rights

statutory interpretation

administrative law

municipal law

## QUESTIONS PRESENTED

1. Whether DuPont's Massachusetts conviction remained a predicate conviction prohibiting firearm possession under 18 U.S.C. § 922(g)(1), or whether Massachusetts's restoration of his firearm rights brought the conviction within the exemption in 18 U.S.C. § 921(a)(20).
2. Whether the term "civil rights" in 18 U.S.C. § 921(a)(20) is limited to voting, holding public office, and serving on a jury, or includes the Second Amendment right to keep and bear arms.
3. Whether restoration of the right to possess firearms, together with retention of the three so-called core civil rights, is sufficient to trigger the § 921(a)(20) exemption.
4. Whether the trial courts erred in affirming the firearm-license revocation and denying preliminary injunctive relief based on the conclusion that federal law prohibited DuPont from possessing firearms.

## HOLDINGS

1. The civil rights contemplated by 18 U.S.C. § 921(a)(20) are not limited to the rights to vote, hold public office, and serve on a jury; the Second Amendment right to keep and bear arms is also a civil right within the statute's ambit.
2. Where a person retained the three core civil rights but lost and expressly regained the civil right to keep and bear arms, the restoration of the firearm right was sufficient to constitute restoration of civil rights under 18 U.S.C. § 921(a)(20).
3. Because Massachusetts restored DuPont's civil right to keep and bear arms, 18 U.S.C. § 922(g)(1) did not prohibit him from possessing firearms; the trial courts therefore erred in relying on federal law to sustain the license revocation and deny preliminary injunctive relief.

## KEY QUOTATIONS

*"We agree with the petitioner." (at 437)*

*"We conclude that the "civil rights" contemplated by § 921(a)(20) are not limited to the three "core" civil rights and that the Second Amendment right to keep and bear arms is a civil right within the statute's ambit." (at 439)*

*"We hold that he has." (at 442)*

*"We hold that Massachusetts thereby restored the petitioner's civil rights within the meaning of § 921(a)(20). Accordingly, § 922(g)(1) does not prohibit the petitioner from possessing firearms." (at 443)*

## FACTUAL BACKGROUND

DuPont was convicted in Massachusetts in 1998 of operating a motor vehicle under the influence, a misdemeanor punishable by up to two and one-half years' imprisonment. In 2005, the Massachusetts Firearm Licensing Review Board determined that he was suitable to possess firearms and that his right to possess a

firearm was fully restored in Massachusetts. New Hampshire officials nevertheless revoked his armed security guard license and, in 2013, his New Hampshire license to carry a pistol or revolver after discovering the conviction. The New Hampshire Department of Safety had earlier agreed in a 2011 settlement to reissue his armed security guard license and not use the conviction as a basis for future revocation or denial.

## PROCEDURAL HISTORY

The Nashua police chief revoked DuPont's state firearm-carry license after determining that his Massachusetts 1998 operating-under-the-influence misdemeanor disqualified him under federal law. The Circuit Court affirmed the revocation. Separately, the Department of Safety conditionally denied renewal of DuPont's armed security guard license, and the Superior Court denied his motion for preliminary injunctive relief to enforce a 2011 settlement under which the Department had agreed to reissue the license and not rely on the conviction in the future. The Supreme Court of New Hampshire reversed both decisions and remanded.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

The decisions of both trial courts were reversed and the matters were remanded for further proceedings consistent with the holding that § 922(g)(1) did not prohibit DuPont from possessing firearms. The court did not reach DuPont's remaining arguments.

## CASES CITED

- Dupont v. Chief of Police of Pepperell, 786 N.E.2d 396, 398-400 (Mass. App. Ct. 2003)
- Bleiler v. Chief, Dover Police Department, 155 N.H. 693, 702 (2007)
- Silverstein v. Town of Alexandria, 150 N.H. 679, 681 (2004)
- Jacobs v. Director, N.H. Division of Motor Vehicles, 149 N.H. 502, 503-04 (2003)
- N.H. Department of Environmental Services v. Mottolo, 155 N.H. 57, 63 (2007)
- UniFirst Corp. v. City of Nashua, 130 N.H. 11, 14 (1987)
- State v. Lambert, 147 N.H. 295, 296 (2001)
- Dube v. N.H. Department of Health & Human Services, 166 N.H. 358, 364 (2014)
- Pelkey v. Dan's City Used Cars, 163 N.H. 483, 487 (2012), aff'd, 133 S. Ct. 1769 (2013)
- McGrath v. United States, 60 F.3d 1005, 1007, 1009 (2d Cir. 1995)
- Dickerson v. New Banner Institute, Inc., 460 U.S. 103, 111-12 (1983)
- Beecham v. United States, 511 U.S. 368, 371 (1994)
- Logan v. United States, 552 U.S. 23, 26, 28-29, 32, 36-37 (2007)
- United States v. Cassidy, 899 F.2d 543, 549 & n.12 (6th Cir. 1990)
- United States v. Caron, 77 F.3d 1, 1-2, 6 (1st Cir. 1996)
- United States v. Estrella, 104 F.3d 3, 7-8 (1st Cir. 1997)

- United States v. Indelicato, 97 F.3d 627, 630 (1st Cir. 1996)
- United States v. Nazzaro, 778 F. Supp. 1, 2 (D. Mass. 1991), aff'd, 985 F.2d 552 (1st Cir. 1993)
- Chief of Police of Shelburne v. Moyer, 453 N.E.2d 461, 464 (Mass. App. Ct. 1983)
- Commonwealth v. Davis, 343 N.E.2d 847, 848-49 (Mass. 1976)
- District of Columbia v. Heller, 554 U.S. 570, 595, 635 (2008)
- McDonald v. Chicago, 561 U.S. 742, 750 (2010)
- United States v. Sanford, 707 F.3d 594, 597 (6th Cir. 2012)
- National Federation of Independent Business v. Sebelius, 132 S. Ct. 2566, 2600 (2012)
- United States v. Valerio, 441 F.3d 837, 842-43 (9th Cir. 2006)
- United States v. Thomas, 991 F.2d 206, 214-15 (5th Cir. 1993)
- United States v. Molina, 484 F. App'x 276, 281, 284 (10th Cir. 2012)
- United States v. Wegrzyn, 305 F.3d 593, 596 (6th Cir. 2002)
- United States v. Brailey, 408 F.3d 609, 613 (9th Cir. 2005)
- United States v. Keeney, 241 F.3d 1040, 1044 (8th Cir. 2001)
- Enos v. Holder, 855 F. Supp. 2d 1088, 1095-96 (E.D. Cal. 2012), aff'd, 585 F. App'x 447 (9th Cir. 2014)

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