



OLR BACKGROUNDER: SUMMARY OF STATE OF CONNECTICUT V. DECICCIO

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DIRK KNIVES AND POLICE BATONS ARE PROTECTED BY THE SECOND AMENDMENT

In December 2014, the state Supreme Court held that the Second Amendment protects the right to possess dirk knives and police batons in one's home, and the existing statutory scheme that categorically bars the transportation of these weapons by vehicle from a former residence to a new residence impermissibly infringes on that constitutional right.

SUMMARY

In *State v. Deciccio* (315 Conn. 79 (2014)), the state Supreme Court overturned the conviction of a man imprisoned for transporting a dirk knife (a double-edged dagger-like knife) and police baton in his vehicle while moving his belongings from one residence to a new residence.

In its unanimous ruling, the court said possession of the weapons is protected by the Second Amendment and the "existing statutory scheme places an undue burden on the defendant's right to possess and keep his dirk knife and police baton in his home by making it impossible for him to transport those weapons

there" (*id.* at p. 150).

The court held that "[t]he safe transportation of weapons protected by the Second Amendment is an essential corollary of the right to possess them in the home for self-defense when such transportation is necessary to effectuate that right" (*id.* at p. 146). The statute's "categorical ban on transporting dirk knives and police batons from one home to another operates as a significant infringement on the defendant's right to keep and bear arms in his home," Justice Palmer wrote (*id.* at p. 140).

The court also held that the statute is not "unconstitutionally vague."

The court said that its holding was narrow, and the legislature is free to regulate the carrying and transportation of dangerous weapons in the interest of public safety, so long as the regulation accords with the Second Amendment.

FACTS

On July 22, 2010, the defendant was moving his belongings from his Connecticut residence to his new residence in Massachusetts when he was involved in a motor vehicle accident. The investigating police officer observed two machetes in plain view in the back seat of the defendant's vehicle, an expandable police baton, a belt clip for the baton, a sword and holder, a large knife with a brass knuckle handle, and a dirk knife, among other things.

The state charged the defendant with six counts of having a weapon in a motor vehicle in violation of CGS § 29-38(a), which, with some exceptions, makes it unlawful to carry certain weapons in a vehicle. At that time, a violation was punishable by a fine of up to \$1,000, imprisonment for up to five years, or both.

After a jury trial, the court found the defendant guilty of unlawfully transporting the police baton and the dirk knife in his vehicle and not guilty with respect to the other weapons. He was sentenced to three years imprisonment, suspended after 15 months, and three years probation with special conditions.

The defendant appealed his conviction on grounds that CGS § 29-38(a) is unconstitutionally vague. He also contended that the statute violated his constitutional right to bear arms because it afforded him no lawful means of transporting his weapons, thereby effectively precluding him from possessing them at his new home.

In a unanimous decision, the court rejected the defendant's claim that the statute is unconstitutionally vague. But it agreed that the Second Amendment protects one's right to possess the weapons in his or her home, and a complete ban on transporting them is thus unconstitutional.

VAGUENESS CLAIM

The defendant claimed that the statute is unconstitutionally vague as applied because the terms "dirk knife" and "police baton" are not defined in statute and do not have a sufficiently clear or definite meaning. Consequently, the statute "impermissibly delegates the resolution of the definition of [the terms] to be determined by [police officers], judges and juries on [an] ad hoc and subjective basis" (*id.* at p. 89). Also, the defendant argued, it is ambiguous as to whether, though not expressly stated, dirk knives and police batons are included in the moving exemption for long knives (knives with an edged portion four or more inches long).

The court rejected the defendant's claim that the statute is unconstitutionally vague.

With regard to the dirk knife, the court said case law from other states and available print reference material on cutlery indicate that "whatever else the term 'dirk' may describe, at the very least, it applies to a knife that is designed primarily for stabbing purposes, rather than utilitarian purposes, has a blade with sharpened edges that tapers to a point, and has a handle with guards intended to facilitate the act of stabbing or thrusting." Consequently, the court said it was "satisfied that a person of ordinary intelligence would be on notice that a knife that has all of the foregoing characteristics falls within the statute's 'unmistakable core of prohibited conduct'" (id. at pp. 95, 96).

With regard to police batons, the court said that a person of ordinary intelligence would, or reasonably should, know what a baton was within the meaning of the statute because (1) "readily available descriptions and images of expandable batons are strikingly similar to the baton that" was in the defendant's vehicle (id. at p. 99) and (2) construction of the term "police baton" as including metal expandable batons was consistent with state law from other jurisdictions (id. at p. 100).

As to the moving exception, the court said that the plain and unambiguous statutory language gave the defendant fair warning that he was not permitted to use his vehicle to transport dirk knives and police batons. It said the statute "contains no language that even arguably would authorize the defendant's transportation of a dirk knife or a police baton" (id. at pp 102, 103). Citing its ruling in *State v. Campbell*, 300 Conn. 368 (2011), the court said the statutory exception pertaining to the carrying of knives does not apply to weapons other than long knives (id. at p. 104).

SECOND AMENDMENT CLAIM

The defendant based his claim of unconstitutionality on the U.S. Supreme Court decisions in *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. Chicago*, 561 U.S. 742 (2010). *Heller* ruled that the Second Amendment guarantee of a right to bear arms protects the possession of weapons typically possessed by law abiding citizens for lawful purposes, but not "dangerous and unusual weapons." *McDonald* ruled that the Second Amendment right to keep and bear arms applies to states as well.

The state argued that (1) dirk knives are not protected by the Second Amendment and the *Heller* ruling because these weapons “are not normally carried by private, law-abiding citizens for defense of hearth and home, and are not traditional military weapons” (id. at p. 116) and (2) police batons are “dangerous and unusual” when possessed by people not associated with law enforcement (id. at p. 128).

The issue for the court to decide was whether the weapons were “arms” within the meaning of the Second Amendment and, if they are, whether the statute’s ban on transporting them in a vehicle from one residence to another violates the Second Amendment.

Are dirk knives and police batons “arms” under the Second Amendment?

Citing *Heller* and *McDonald*, the court said that dirk knives are less lethal than the handguns that were the focus of these cases, and they are not “dangerous or unusual.” Further, they closely resemble bayonets and swords and have long been used for military purposes (pp. 122, 123). Thus, the court concluded that they are “arms” protected by the Second Amendment.

The court arrived at the same conclusion for police batons. Citing their long military usage, the court agreed with the defendant that police batons are “arms” within the meaning of the Second Amendment because they are “weapons with traditional military utility that are typically possessed by law-abiding citizens for lawful purposes, and they are neither especially dangerous nor unusual” (id. at p. 129). The court further noted that police batons “are inherently less lethal, and therefore less dangerous and less intrinsically harmful, than handguns, which clearly constitute ‘arms’ within the meaning of the Second Amendment” (id. at p. 133).

Does the ban on transporting dirk knives and police batons violate the Second Amendment?

The court said that the statute “strikes close to the core protection of the second amendment because it erects a virtual bar to possessing certain protected weapons, including dirk knives and police batons, in the home for the purpose of self defense” (id. at p. 141). It deprives owners of any realistic way of bringing the weapons home after purchase or moving them from one residence to another (id. at p. 139). But the availability of “other options for possessing protected weapons in the home mitigates the adverse effect of the statutory prohibition” (id. at p. 142). Consequently, the statute was subject to intermediate scrutiny. To pass intermediate scrutiny, the state had to establish that the absolute ban on transporting dirk knives and police batons between residences is substantially related to an important government objective (id. at p. 143).

Under this level of scrutiny, the court found that the statute's prohibition against moving the weapons between residences was unconstitutional.

The court said that "post-*Heller* case law supports the commonsense conclusion that the core right to possess a protected weapon in the home for self-defense necessarily entails the right, subject to reasonable regulation, to engage in activities necessary to enable possession in the home" (id. at p. 145). Thus:

the safe transportation of weapons protected by the second amendment is an essential corollary of the right to possess them in the home for self-defense when such transportation is necessary to effectuate that right. Conversely, in rejecting second amendment challenges to measures prohibiting the possession of handguns outside the home, courts have deemed it significant that those regulatory schemes contained provisions including, in addition to the right to possess handguns in the home, limited exceptions permitting the transportation of handguns between homes, or between home and dealer or repairer (id. at p. 146).

The court said the state had provided no justification for the ban on transporting the weapons between residences. Also, because the statute contained a variety of limited exceptions permitting the transportation of other weapons significantly more lethal than dirk knives and police batons, there was no merit to the state's claim that a similar exception for batons and dirk knives would frustrate or impede the government's interest of ensuring the safety of the public and police officers.

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