

FILED
COURT OF APPEALS
DIVISION II
2015 SEP -8 AM 9:29
STATE OF WASHINGTON
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IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II.

Aaron Mylan,
Appellant,

COA No. 47253-8-II

v.

STATEMENT OF ADDITIONAL GROUNDS

State of Washington
Respondant.

FOR REVIEW, RAP 10.10(e)

I. JURISDICTION & TIMELINESS

Appellant, Aaron Mylan brings this Statement of Additional Grounds for Review pursuant to RAP 10.10(e) which state in pertinent part:

"[I]f within 30 days after service of the brief prepared by Defendant's counsel, defendant requests a copy of the verbatim report of proceedings from defendant's counsel, counsel should promptly serve a copy... The pro se statement of additional grounds for review should then be filed within 30 days after service of the verbatim report."

Now, Appellant/Defendant Aaron Mylan, having received a copy of the verbatim report by Institution Legal Mail at the Stafford Creek Corrections Center, Aberdeen, Washington on Friday, August 28, 2015, and having filed this Statement of Additional Grounds

for Review with the Court of Appeals in accordance with GR 3.1 prior to September 29, 2015, the Statement of Additional Grounds is timely and within the Court's jurisdiction to hear and render judgment on. (See Exhibit A), Declaration of Aaron Mylen, and attached GR 3.1 Declaration of Mailing).

II. GROUNDS FOR REVIEW

A. ADDITIONAL GROUND # 1

Does RCW 9.41.040, Unlawful Possession Of Firearms and related statutes, as-applied to the Appellant, Aaron Mylen's unique set of factual circumstances offend the Constitution of the United States and Mr Mylen's well-established right to Life which by corollary allows him to protect & defend himself, and by natural extension, his right to not to have to place himself in a situation where he could have a reasonable expectation of being seriously harmed or killed by in order to be compliant with the law. Especially in light of the Jury finding him NOT GUILTY of all other charges and the firearm in question was taken by him from an assailant who had just used the firearm to assault and threatened him, as a preventative, defensive measure to protect his life and health, and he did not maintain possession of the firearm but only had it long enough to secure his well being.

III. ARGUMENT & PRESENTMENT OF LAW

To Properly Review This Case

We Must Start With

The Jury's Verdict

See (VRP, Vol. VI. Pgs. 4-7.

"We the jury in the above-entitled case do find the defendant, Aaron M Mylen, Not Guilty of County One, the crime of Robbery in the First Degree...

Verdict Form B, We the jury in the above-entitled case do find the defendant, Aaron M. Mylen, Not Guilty of Count Two, the crime was Assault in the Seceond Degree,...

Verdict C, We the jury in the above-entitled case do find the defendant, Not Guilty in County Three, the crime of Assault in the Second Degree...

Verdict Form D, We the jury in the above-entitled cuase do find the defendant, Aaron Maurice Mylen Gulty of Count Four of the crime of Unlawful Possession of Firearms in the First Degree... [polling the jury]..."

RCW 9.41.040, Unlawful Possession Of Firearms states:

"(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, or has in his possession, or has in his control any firearm after having previously been convicted or found guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW."

In accepting the verdict of the jury and their fact-finding purview this court should by natural extension accept the:

(1) The jury found that Mr Mylan was not the assultor/aggressor in this case but was in fact the party being assulted;

(2) The jury found that Mr Mylan did not bring the firearm t the encounter by took it from the other party who had assulted him with it, and that he took it from his assultor to protect himself; and,

(3) That had Mr Mylan not been previously convicted of a serious crime he would not have been convicted of the crime of Unlawful Possession of a Firearm.

(4) That the instructions to the jury violated Mr Mylan's Constitutional right to due process. It invaded the find-finding purview of the jury by requiring a predetermined verdict of guilty because the jury was sworn and directed to follow the judge's direction regarding the law. A situation which did not allow the jury to use common sense and find Mr Mylan not guilty in a situation that any other action would have jeopardized his life, health, and wellbeing.

As such this court in reviewing the facts of the case, the law, and applying common sense should issue a ruling finding that:

(a) RCW 9.41.040, unlawful possession of a firearm is repugnant to the Constitution for violating Mr Mylan's right to life under the Constitution of the United States given the unique set of circumstances involved;

(b) overturn his conviction; and,

(c) issue an as-applied ruling narrowly tailored to Mr Mylan in the interest of justice.

As-Applied Challenges
To Statute

When a petitioner challenges the lawfulness of a statute he need not prove the statute unlawful in all circumstances, but only those as-applied to him. See e.g., Acosta v. City of Coate Mesa, 718 F3d 800, 822 (9th Cir. 2013) ("Facial and as-applied challenges can be viewed as two separate inquiries. [collecting US Supreme Court cases]"). See also e.g., State v. Nelson, 158 Wn2d 699, 709-10, 147 P.3d 553 (2006) (Justice Johnson, J.M., dissenting)

"An as-applied challenge to the constitutional validity of a statute is characterized by a party's allegation that the application of the statute in the specific context of the party's actions or intended action is unconstitutional." City of Redmond v. Moore, 181 Wn2d 664, 668-69, 91 P.3d 875 (2004)."

See also, State v. Dwane, 180 WnApp 846, 856-57, 324 P.3d 757 (2014)(same).

As-Applied Challenges Require A
Demonstratable Set Of Circumstances

See e.g., Justice v. Hosemann, 771 F3d 285, 292 (5th Cir. 2014) ("Although as-applied challenges are generally favored..., a developed factual record is essential. Particularized facts are

what allow a court to issue a narrowly tailored and circumscribed remedy. See Citizens United."). See also e.g., Mississippi Band Of Choctaw Indians v. Holyfield, 440 U.S. 30, 41 n.15, 109 Sct 1997, 104 LEd2d 29 (1989)

"In practice, whether such as-applied challenges comes within our appellate jurisdiction often turns on how that challenge is framed. See Johnson v. Denoke, 357 U.S. 235, 244... (1950); Memphis Gas Co. v. Becker, 315 US 649, 650-51... (1942)."

The Unique Circumstances Allow
For A Narrow Ruling

See e.g., City of Lakewood v. Plain Dealer Publishing Co., 486 US 750, 774-75 & n.2, 108 Sct 2138, 100 LEd2d 771 (1986)

"The Court has been reluctant to entertain facial attacks on statutes, ie, claims that a statute is invalid in all its applications. Our normal approach has been to determine whether a law is unconstitutional as-applied in the particular case before the Court."... "[fn.2 [collecting cases]]".

See also e.g., United States v. Booker, 543 US 220, 314, 125 Sct 738, 160 LEd2d 621 (2005)

"When a litigant claims that a statute is unconstitutional as applied to him, and the statute is in fact unconstitutional as applied, we normally invalidate the statute only to the litigant in question. We do not strike down the statute on its face. In the typical case, 'we neither want nor need to provide relief to non parties when a narrower remedy will full protect the litigants.' [collecting cases]."

Constitutional Rights Can Be
Established By Common Sense

See e.g., Devereaux v. Abbey, 263 F3d 1070, 1075 (9th Cir. 2001)

[citing] "Gishel v. Sylvester, 244 F3d 1182, 1189 (9th Cir. 2001)('precedent directly on point is not necessary to demonstrate that a right is clearly established. Rather if the unlawfulness is apparent in light of pre-existing law, then the standard is met. In addition, even if there is no analogous case law, a right can be established on the basis of common sense.')." "

Does Mr Mylan Have A Constitutional Right
To Life Under The United State Constitution
That Superceeds Unlawful Possession Of A Firearm

The founders of the United State clearly had a firm belief in an individual's right to life and all the corollary and analogous right that would naturally flow from it. See e.g., Hall v. State of Maryland, 378 US 226, 286, 84 Sct 1014, 12 LEd2d 822 (1964)(Justice Goldberg, with who Chief Justice joins, and with whom Justice Douglas joins, concurring),

"The Declaration of Indipendence states that American creed: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and th epursuit of Happiness."

The Right To Life Has
A Due Process Component To It

See e.g., District Attorney's Office of the Third Judicial Dist.
v. Osborn, 557 US 52, 129 Sct 2308, 2334, 174 LEd2d 38 (2009)

"The Liberty interest protected by the Due Process Clause is not a creation of the Bill of Rights. Indeed, our Nation has long recognized that the liberty safeguarded by the Constitution has deeper roots. See Declaration of Independence ¶ 2 (holding it is self-evident that 'all men are... endowed by their Creator with certain unalienable rights,' among which are 'Life, Liberty, and the pursuit of Happiness.'")

See also e.g., In re A.W., 2015, WL 710549, 4 n.12 (Wash. 2015)(En Banc)("The Washington and United States Constitutions contain nearly identical due process clauses." [comparing Art.I, sec.3 to the Fourteenth Amendment.]).

The Constitutional Right To Life
Encompasses The Right To Protect Oneself

See e.g., McDonald v. City of Chicago, 561 US 742, 790 n.33 130 Sct 3020 (2010)(noting a right to protect oneself). See also e.g., United States v. Masciandro, 638 F3d 458, 467 (4th Cir. 2011),

saying:

"The Heller Court began by noting that the right predated the Constitution and was always an important part of individual freedoms -- 'one of the fundamental rights as Englishmen,' Heller 128 Sct at 2798. It found the right to 'protect [] [oneself] against both public and private violence,' id. at 2799 (emphasis added), thus extending the right in some form to whatever a person could become exposed to public or private violence. See also id. at 2797... Because self-defense has a right to take place whatever [a] person happens to be,' it follows that the right extends to public area beyond the home."

See also Parute v. County of San Diego, 724 F3d 1144, 1153 (9th Cir. 2014)(citing Heller regarding right to protect oneself).

The Right To Protect Oneself
May Also Include Acts That Are
Usually Deemed To Be Illegal

See e.g., State v. Valentine, 132 Wn2d 1, 8-9, 935 P.2d 1294 (1997)

"In State v. Hornaday, 105 Wn2d 120, 131, 713 P.2d 71 (1986), we said the following... 'A person illegally arrested; the means used to resist must be reasonable and proportioned to the injury attempted upon the party sought to be arrested...'

In Rousseau, a 1952 case, we recited the common law rule prevalent in most legal jurisdictions at the time: 'It is the law that a person illegally arrested by an officer may resist that arrest, even to the taking of life if his own life, or any great bodily harm is threatened.' Rousseau, 40 Wn2d at 94, 241 P.2d 447 (citing John Bad Elk v. United States, 177 US 529, 20 Sct 729, 44 LEd 874 (1900), and State v. Gum, 58 D.Va. 105, 69 SE 463 (1910)."

All-in-all, Mr Mylan's actions while normally being considered illegal, can reasonably said to be covered under, and within the scope of his Constitutional right to Life and health when weighed in the balance of justice. No reasonable man would disregard common sense and continue to cling to the idea that Mr Mylan's conviction should be maintained and that he is guilty of a crime. Unlike the jury who had a sworn duty to disregard their conscience and follow the judges orders, a process that in this case predermines a verdict, and should be found to violate due process, this Court can use its inherent powers to right a manifest injustice. In doing so it should provide Mr Mylan an as-applied ruling finding that RCW 9.41.040 is unconstitutional specifically with regard to Mr Mylan and his unique set of circumstances.

IV. CONCLUSION

(1) Mr Mylan has a Constitutional level right to life and health that includes the ability to protect himself, and to take actions that would normally be consider illegal in defense of his Life and health.

(2) The jury clearly found Mr Mylan NOT GUILTY of all other counts involved, which in situation like this would normally be predicates for firearm charges.

(3) The jury had no choice but to find Mr Mylan guilty of possession of a firearm given the judge's directions and the sworn oath to uphold them, making the verdict predetermined and violating his right to due process.

(4) RCW 9.41.040 and the verdict of Guilty of Unlawful Possession of a Firearm is repugnant to the Constitution as-applied to the unique set of circumstances surrounding Mr Mylan's case.

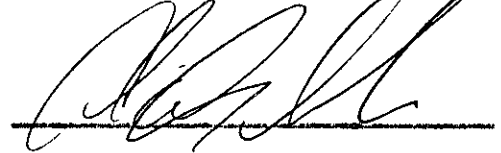
(5) This Court should reverse Mr Mylan's conviction in the interest of justice, to correct a manifest injustice, and issue an as-applied ruling.

V. OATH

I, Aaron Mylan declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct to the best of my knowledge.

Dated this 3rd. day of September, 2015 at the Stafford Creek
Corrections Center, Aberdeen, WA.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. Mylan', is written over a solid horizontal line.

Aaron Mylan DOC# 345724
Stafford creek Corrections Center
191 Constantine Way, H2B123
Aberdeen, WA. 98520

EXHIBIT A

(Exhibit A)

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II.

Aaron Mylan,
Appellant,

COA No. 47253-8-II

v.

DECLARATION OF AARON MYLAN

State of Washington,
Respondent.

I Aaron Mylan under penalty of perjury under the laws of the State of Washington declare and say:

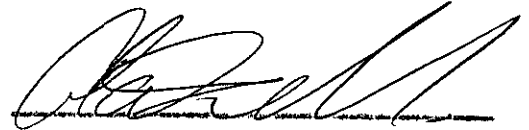
1. I am the Appellant/Petitioner in the above referenced action. I am over the age of 18 years old and competent to testify to the facts contained herein. I make the Declaration in good faith in support of my Statement of Additional Ground Pursuant to RAP 10.10(e).

2. That within 30 days of my Appellate Attorney submitting her brief to the Court of Appeal Division II., I asked her for a copy of the verbatim Report of Proceedings. That she promptly sent me one which I received on August 28, 2015 at the Stafford Creek Corrections Center by Institutional Legal Mail.

3. I have now filed the Statement of Additional Ground within 30 days of receiving the verbatim report of proceedings on September 3, 2015 by Institutional Legal Mail in accordance with GR 3.1. Having done so this Appellate Court has complete jurisdiction to render judgement on my claims.

Dated this 3rd day of September, 2015 at the Stafford Creek Corrections Center, Aberdeen, Washington.

Respectfully Submitted,


A handwritten signature in black ink, appearing to read 'Aaron Mylen', written over a horizontal line.

Aaron Mylen DOC# 345724
Stafford creek Corrections Center
191 Constantine Way, H2B123
Aberdeen, WA. 98520

DECLARATION OF MAILING
PURSUANT TO GR 3.1

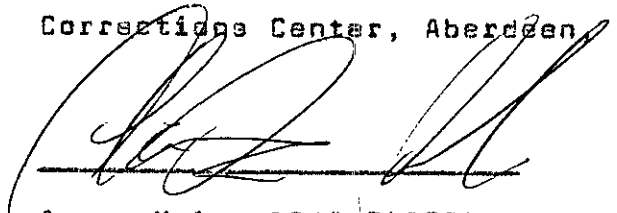
I, Aaron Mylen, Appellant/Petitioner declare and say: That on the 3rd day of September, 2015 I deposited the following document(s) in the Stafford Creek Corrections Center legal mail system, postage pre-paid, United States Mail under cause number 47253-8-II: Statement of Additional Grounds For Review Pursuant to RAP 10.10(e); Declaration of Mailing, or a copy thereof addressed to the following:

Washington Court Of Appeals
Division II
950 Broadway, Ste.300
Tacoma, WA. 98402

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STATE OF WASHINGTON
BY  DEPUTY

I, Aaron Mylen declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 3rd day of September, 2015 at the Stafford Creek Corrections Center, Aberdeen Washington.



Aaron Mylen DOC# 345724
Stafford Creek Corrections Center
191 Constantine Way, H2B123
Aberdeen, WA. 98520