Supreme Court No. _____
COA No. 58401-8-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NATHAN PETERSON,

Petitioner.

PETITION FOR REVIEW

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STATUTES AND COURT RULES

A. IDENTITY OF PETITIONER

Nathan Peterson was the appellant in COA No. 58401-8-II, and is the Petitioner herein.

B. COURT OF APPEALS DECISION

Nathan Peterson seeks review of the Court of Appeals decision issued in 58401-8-II, on April 8, 2025. Appendix.

C. ISSUES PRESENTED ON REVIEW

1. Whether the State's evidence as to accessibility and nexus was insufficient to prove that Mr. Peterson unlawfully possessed a firearm, where the testimonial and video evidence merely showed that Mr. Peterson may have seen or touched a rifle that was discovered by police amongst a jumble of items 4 weeks later, by officers who opened the trunk of the vehicle he had been driving, which had been rolled over twice by a PIT maneuver before being searched.

2. Whether Mr. Peterson's firearm findings were not supported by sufficient evidence.

3. Whether the unlawful possession of a firearm conviction violated the Second Amendment to the United States Constitution and New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).[1]

D. STATEMENT OF THE CASE

1. Facts.

On November 6, 2022, Nathan Peterson and several friends he had met at the Emerald Queen Casino in Fife were in the Port Angeles area to gamble at the Elwha and Seven Cedars casinos. RP 561-63. Mr. Peterson was charged with assault in the second degree and attempting to elude after law enforcement in the Port Angeles area pursued him based on reports of two cars racing, and shots fired near a BMW in the area of the IGS gas station on Highway 101. RP 366-70; CP 287-89 (affidavit of probable cause).

[1] The Second Amendment provides that "the right of the people to keep and bear Arms, shall not be infringed". U.S. Const. amend. II.

Austyn Cox told a Clallam County deputy that he was driving his BMW on 101 when he encountered a blue Hyundai, later determined to be stolen, that he said was trying to race him. RP 251, RP 337. At some point the Hyundai pulled behind the BMW and two shots were fired. This caused both Mr. Cox and his passenger Brayden Robbins to fear for their lives. RP 251 (the jury acquitted Mr. Peterson on the two assault charges).

Mr. Peterson began to slow the Hyundai to a stop when the pursuing police, now including Sequim police, flashed lights and sounded sirens. RP 314. However, at one point Mr. Peterson was driving into oncoming traffic. RP 486.

A Jefferson county deputy stopped the vehicle by colliding into it, in a PIT maneuver. RP 362, 368. The technique caused the Hyundai to fly off the road and land upside down in a ditch. RP 298, 313-14. Mr. Peterson and three other occupants exited or were pulled out of the Hyundai, including passenger Scarlett Lynch. RP 299, 362, 417-18.

Ms. Lynch told law enforcement that the whole incident was caused when the front seat passenger Mack Lefeaux, fired the two shots and then threw a gun out of the window. RP 330. Ms. Lynch testified that everyone in the car was silent when this happened, and then Mr. Lefeaux began controlling the situation - Mr. Peterson was driving because it was what Lefeaux told him to do. RP 338-39.

Other than testimony, the evidence from surveillance video showed that the group of friends were either staying at, or taking drugs together at Port Angeles's Victorian Motel. RP 299, 541-42. The Victorian Motel's surveillance video from showed the group of friends getting into the Hyundai. Several of the group placed belongings in the trunk, and Mr. Peterson can be seen putting his black backpack in the trunk. RP 456; Exhibits 56, 101. The prosecutor told the jury that another video showed Mr. Peterson taking something out of the back seat of the car and then putting something in the trunk. RP 311-12; Exhibits 56, 101.

2. <u>Acquittal and convictions</u>.

The jury found Mr. Peterson not guilty on two second degree assault charges, rejecting the State's theory that he was an accomplice to Mr. Lefeaux's shooting. CP 170, 172, 191. The court instructed the jury on the defense of duress on the eluding charge, but Mr. Peterson was found guilty on that count. RP 685; CP 196. Mr. Peterson was found guilty of unlawful imprisonment of Ms. Lynch under the theory that she wanted to get out of the Hyundai, but Mr. Peterson did not slow down. CP 166.

Mr. Peterson was also found guilty on four counts of possession of a controlled substance with intent to deliver, and unlawful possession of a firearm. CP 158, 160, 162, 164.

Pursuant to an agreement of the parties and jury instruction no. 4, Mr. Peterson had previously been convicted of a non-serious offense. RP 691; CP 224. The firearm allegation was premised on a Mossberg. 22 caliber rifle that was discovered in the trunk when the police searched the

Hyundai, approximately a month after the incident. RP 401; CP 288. When officers opened the vehicle's trunk, the rifle butt was sticking out from amongst a large jumble of bags and other personal belongings. RP 401. Mr. Peterson did agree that he had bullets in his backpack, but he clearly and emphatically testified that he had no idea that a gun was in the trunk. RP 576, 588. Police also located a small black backpack further forward in the trunk, Mr. Peterson admitted was his; it contained quantities of fentanyl, cocaine, heroin, and methamphetamine, which Mr. Peterson explained were for personal consumption because he was very dependent on them. RP 618. Mr. Peterson also explained that the cash located by police, approximately $9,000, was his previous casino winnings. RP 616.

E. ARGUMENT

1. The evidence was insufficient to prove beyond a reasonable doubt that Mr. Peterson possessed the firearm found in the trunk of the car.

a. Review is warranted.

"Due process requires that the State provide sufficient evidence to prove each element of its criminal case beyond a reasonable doubt." City of Tacoma v. Luvene, 118 Wn.2d 826, 849, 827 P.2d 1374 (1992) (citing In re Winship, 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970)); U.S. Const. amend. XIV. The question whether the evidence was sufficient presents a significant constitutional issue, warranting review under RAP 13.4(b)(3).

b. The evidence was insufficient.

Evidence is sufficient to support a conviction only if, when viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Mr. Peterson's conviction for unlawful possession of a firearm (Count 9) was premised on a prior offense to which Mr. Peterson stipulated. CP 224; RP 288. Under RCW 9.41.040 as charged and instructed upon in Mr. Peterson's case, he would be guilty of unlawful possession of a firearm if he knowingly possessed a firearm. State v. Anderson, 141 Wn.2d 357, 5 P.3d 1247 (2000).

"Possession" of an item may be either actual or constructive. State v. Callahan, 77 Wn.2d 27, 459 P.2d 400 (1969). Actual possession means that the item is in the personal custody of the person charged with possession. State v. Listoe, 15 Wn. App. 2d 308, 326, 475 P.3d 534 (2020). The jury was instructed that "constructive possession" occurs when a person has dominion and control over an item. CP 204; see Listoe, 15 Wn. App. at 326. To determine whether sufficient evidence proves that a defendant had dominion and control over an item, the jury examines the totality of the circumstances and a variety of factors including but not limited

to (1) whether the defendant could immediately convert the item to his or her actual possession, (2) the defendant's physical proximity to the item, and (3) whether the defendant had dominion and control over the premises where the item was located. Listoe, at 326-27. A vehicle is considered a "premises." State v. George, 146 Wn. App. 906, 920, 193 P.3d 693 (2008). Consistent with these principles, the trial court gave the following jury instruction for Count 9:

> [P]ossession means having a firearm in one's custody or control. It may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession but there is dominion and control over the firearm.
>
> Proximity alone without proof of dominion and control is insufficient to establish constructive possession. Dominion and control need not be exclusive to support a finding of constructive possession.
>
> In deciding whether the defendant had dominion and control over a firearm, you are to consider all the relevant circumstances in the case. Factors that you may consider, among others, include whether the defendant

> had the immediate ability to take actual possession of the firearm, whether the defendant had the capacity to exclude others from possession of the firearm, and whether the defendant had dominion and control over the premises where the firearm was located. No single one of these factors necessarily controls your decision.

CP 212 (Instruction 36).

The evidence at Mr. Peterson's trial was insufficient. In order to convict him for unlawful possession of a firearm, the State was required to prove that the accused knowingly possessed a firearm. Anderson, supra; State v. Marcum, 116 Wn. App. 526, 534, 66 P.3d 690 (2003). The State never met the standard for constructive possession.

Neither proximity to a firearm or knowledge of its presence establish sufficient evidence that the defendant possessed a firearm, although "both may be considered in evaluating" the issue of possession. State v. Rawlins, 21 Wn. App. 2d 1037, review denied, 199 Wn. 2d 1029, 514 P.3d 638 (2022) (unpublished decision, cited pursuant to GR 14.1(a));

State v. Raleigh, 157 Wn. App. 728, 737, 238 P.3d 1211 (2010). The jury was given a 'to convict' instruction for unlawful possession of a firearm which required the jury to find possession; no definitional instruction nor any other instruction was given as to the statutorily available language defining the this single-means offense as including 'ownership' of a firearm. See RP 659-70; CP 211 (Instruction 35); see State v. Barboza-Cortes, 194 Wn.2d 639, 646, 451 P.3d 707 (2019).

Here, Mr. Peterson was not the owner or renter of the Hyundai. RP 403-404. The only pieces of identification found in the vehicle by law enforcement were those of other individuals than the four persons in the car. RP 403-05. Although Mr. Peterson was driving the car during the incident in question, it had previously been driven by Chris Tavita or Mr. Lefeaux, the latter being the person who shot a gun out of the car. RP 330. The previous night, as shown by testimony and surveillance footage from the Victorian Motel in Port

Angeles, Mr. Tavita and Mr. Lefeaux had used the vehicle to drive to the Elwha Casino, but Mr. Peterson remained in the motel room, which Mr. Tavita had rented. RP 248; Exhibits 56, 101 (surveillance videos). Mr. Peterson had purchased drugs from Tavita and Lefeaux, who were his "connects" in the area. RP 600. He planned to go with everyone to the Seven Cedars casino, which had a lax ID policy, as he had lost his identification recently. RP 596.

In any event, dominion and control over the car, even if that had been established, does not itself prove dominion and control over the rifle. State v. Shumaker, 142 Wash.App. 330, 332-33, 174 P.3d 1214 (2007). The State's evidence here showed nothing more than proximity and a possible prior view of the firearm, and this case does not fall within those cases where the owner and operator of a vehicle with knowledge and access to a forearm was deemed to possess it. For example, where a defendant was the owner of a truck, he was stopped driving it and the "rifle [was] in a partially open case in the

backseat behind the driver's seat in the extended cab of the small pickup truck [and] the rifle was within an arm's reach" of Turner. State v. Turner, 103 Wn. App. 515, 521-22, 13 P.3d 234 (2000).

Below, the Court of Appeals wrongly viewed the fact of Mr. Peterson not being the owner of the car as not established, which it was, and distinguished the case from Turner on that basis. Decision, at p. 8 (Appendix). As the owner and driver, "Turner had dominion and control of the truck where the rifle was found; he owned the truck and was the driver." Turner, 103 Wn. App. at 524. And here. when officers opened the Hyundai's trunk during the warrant search, it was only then that the rifle butt was immediately seen sticking out from amongst a large jumble of bags and belongings. RP 380-81, 401. No evidence, including the video surveillance footage, showed a rifle *standing* amongst the trunk's contents. The Hyundai had been subjected to a PIT collision maneuver to stop it, and when the deputy conducted the PIT, the Hyundai

was crashed into, causing it to roll over and land on its roof, in a ditch off to the side of the road. RP 298 (the vehicle "ended up on its top, in the ditch") (testimony of Clallam County sheriff's deputy Steffen Estep), Exhibit 48 - photo of overturned Hyundai in dirt ditch.

After the roll-over, the Hyundai was pulled out of the ditch and taken to a police impound lot, where the warrant search was executed approximately four weeks after the incident. RP 371-72. At that time, before the trunk was opened, the Hyundai had been flipped back over. Exhibit 22. This is when the Mossberg rifle was observed. RP 377 (testimony of Deputy Cannady that the rifle's butt end was "sticking straight out" from amongst the bags in the trunk when it was opened to be searched).

The facts in Turner are the opposite of what was shown during Mr. Peterson's trial. Below, the State made much of the notion that Mr. Peterson was guilty because he placed his backpack in the Hyundai's trunk before driving the car on

November 6. RP 667. According to the State, Mr. Peterson must have seen the rifle at that time. RP 667 (arguing, "Ladies and gentlemen, is it reasonable that when Mr. Peterson is in that trunk of a Hyundai Sedan putting his backpack, that he can't see this firearm?"). But the unusual manner in which the gun was seen prominently sticking up was after the Hyundai had been towed by the police and brought into the impound lot flipped back over. RP 467, 499.

The rifle's position when the Hyundai was searched does not show that Mr. Peterson would have known about the firearm, could see it, or that he had access to it from the driver's seat, and constructive possession was not proved even if Mr. Peterson did know about it. Mr. Peterson's case is more like State v. Chouinard, 169 Wn. App. 895, 900, 282, P.3d 117 (2012). There, the defendant was a passenger in the backseat of a car, police stopped the vehicle based on reports that shots had been fired out of it, and when officers cleared the car of its passengers and saw a rifle, with an attached flash suppressor,

protruding up from the trunk of the car through a gap between the backrest and rear dash. Chouinard, 169 Wn. App. at 898. Even with the proximity and visibility of the weapon, the report of shots having been fired from the vehicle, and even given Chouinard's acknowledgment that he knew the weapon was there, the Court reversed the conviction because there was insufficient evidence to establish dominion and control. Chouinard, 169 Wn. App. at 903.

Although in other cases ownership existed and weighed toward guilt, the fact of driving a car in a given case, and in this case, Mr. Peterson's act of driving the Hyundai which had already been driven by several other people, does not overcome the lack of facts showing dominion and control.

In addition, Mr. Peterson had no available opportunity to reduce the firearm to actual possession, further rendering a conclusion of possession inapt. State v. Escheverria, 85 Wn. App. 777, 783, 934 P.2d 1214 (1997) (reversing, *inter alia*, where no evidence that the defendant could reach and grab the

weapon, which would weigh in favor of unlawful possession, was presented). His fingerprints were not on the rifle. RP 534. Even if Mr. Peterson had touched the firearm in the past, constructive possession is not shown. State v. Cote, 123 Wn. App. 546, 550, 96 P.3d 410 (2004) (fingerprints on item showed that Mr. Cote "was at one point in proximity to the contraband and touched it [but] this is insufficient to establish dominion and control."); Callahan, supra, 77 Wn.2d at 29 (passing control is only a momentary handling, not possession) (citing State v. Staley, 123 Wn.2d 794, 801, 872 P.2d 502 (1994)).

The State's evidence does not sustain a conviction for constructive possession of a firearm. The reviewing court should reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998).

2. The evidence was insufficient to enter judgment on the jury's answers of "yes" to the special allegations that Mr. Peterson was armed with a firearm.

a. Review is warranted.

The State must prove every element essential to guilt beyond a reasonable doubt. City of Tacoma v. Luvene, 118 Wn.2d at 849) (citing In re Winship, 397 U.S. at 360); U.S. Const. amend. XIV. The question whether the evidence was sufficient presents a significant constitutional issue, warranting review under RAP 13.4(b)(3).

b. The evidence was insufficient.

The State contended that the Mossberg rifle found in the trunk of the Hyundai warrranted four consecutive firearm enhancements on top of the convictions for possession of a controlled substance with intent to deliver. CP 75 (third amended information). RCW 9.94A.533(3) provides, in part: "[A]dditional times shall be added to the standard sentence range for felony crimes . . . if the offender . . . was armed with a firearm." RCW 9.41.010 does not define the term "armed," but

the Washington courts have addressed what factual circumstances can support a finding that a defendant was armed.

Mr. Peterson was not armed and the enhancements must be stricken on remand. It is true that the question of whether a defendant is armed is a fact-specific decision. State v. Gurske, 155 Wn.2d 134, 139, 118 P.3d 333 (2005) ("Regardless of the offense, whether the defendant is armed at the time a crime is committed cannot be answered in the same way in every case."). However, Washington cases have required that both accessibility and nexus be proved, beyond a reasonable doubt. And importantly, whether a person is armed for the purposes of a firearm enhancement is a mixed question of law and fact that the Court of Appeals reviews *de novo*. State v. Sassen Van Elsloo, 191 Wn.2d 798, 825, 425 P.3d 807 (2018).

For purposes of RCW 9.94A.533(3), a person is "armed with a firearm" during the commission of an offense if the person could both (1) easily access and readily use a weapon,

and (2) a nexus connects the person, the weapon, and the crime. State v. Eckenrode, 159 Wn.2d 488, 490-91, 150 P.3d 1116 (2007); State v. Schelin, 147 Wn.2d 562, 567-68, 55 P.3d 632 (2002), State v. Johnson, 94 Wn. App. 882, 892–97, 974 P.2d 855 (1999) (inappropriate to send deadly weapon enhancement to the jury without some showing of both accessibility and nexus). A person can easily access and readily use a weapon when it is easy to get to for use against another person, whether for offensive or defensive purposes, to facilitate the commission of the crime. State v. Gurske, at 139 (enhancement reversed where State proved only the fact of possession but not that the weapon was accessible at a relevant time or connected to the crime).

The requirements for being deemed armed may often be interrelated. In the present case, first, there was no ready accessibility for use. The fact of the presence of a rifle in the Hyundai's trunk does not constitute Mr. Peterson being armed. The case is like Gurske, where the police found an unloaded

pistol, a loaded magazine, and drugs. Gurske, 155 Wn.2d at 143. Our Supreme Court determined that the firearm in that case was not easily accessible and readily available at the time of the crime because a person could not access the firearm for offensive or defensive purposes unless he exited the truck. Gurske, at 143-44. Here, even on the assumption that Mr. Peterson somehow knew of the rifle, it was not readily accessible to him where it was in the trunk of the Hyundai.

In contrast, in State v. Eckenrode, the police arrived at Mr. Eckenrode's house and found several weapons, drugs, and evidence of drug manufacturing. Eckenrode, at 491-92. Eckenrode was convicted of possessing and manufacturing controlled substances, along with a firearm sentencing enhancement. Eckenrode, at 494-96. The enhancement was affirmed where the 911 call mentioned a firearm being wielded, and the drug manufacture operation was protected by several firearms and a police scanner to evade detection of the illicit drug business. Eckenrode, at 494-95. The gun that police

found in the Hyundai's trunk was not readily accessible to Mr. Peterson.

There was also no "nexus." To be deemed armed while committing a crime, there must be more than accessibility – there must also be a nexus connecting the person, the weapon, and the crime, thus even if the State proves constructive possession of a weapon, that does not establish sufficient nexus for an enhancement. State v. Brown, 162 Wn.2d 422, 432, 173 P.3d 245 (2007).

The required nexus must connect the firearm to the crime, and the defendant. Brown, at 431 (quoting State v. Schelin, at 570). The nexus requirement serves to place limiting parameters on whether a defendant is armed, especially in the instance of an ongoing crime such as constructive possession of drugs. Sassen Van Elsloo, supra, at 827 (quoting Gurske, at 140); State v. Valdobinos, 122 Wn.2d 270, 282, 858 P.2d 199 (1993), Schelin, at 570.

Here, Mr. Peterson was arrested after being pulled out of the upside-down Hyundai, and along with the police towing of the car, the Mossberg rifle was seen by police sticking out of a jumble of possessions which included Mr. Peterson's backpack. This was not nexus, rather, it was merely the presence of a firearm. Schelin, at 570 (mere presence of a weapon at a crime scene in and of itself is insufficient to establish the nexus between a crime and a weapon).

Particularly in the instance of a continuing crime such as constructive possession of drugs, Schelin, at 568, without a nexus between the defendant, the crime, and the weapon, "courts run the risk of punishing a defendant under the deadly weapon enhancement for having a weapon unrelated to the crime. State v. Willis, 153 Wn.2d 366, 372, 18, 103 P.3d 1213 (2005) (citing State v. Johnson, 94 Wn. App. 882, 895, 974 P.2d 855 (1999)).

Mr. Peterson had his sentence enhanced simply because he constructively possessed a gun at the same time as an

ongoing offense was being committed. In the present case, although there was physical proximity of the firearm, Mr. Peterson did not have easy access to the gun for use against any other person during the offense and there was no nexus. But the enhancement must be proved beyond a reasonable doubt. U.S. Const. amend. XIV.

3. Mr. Peterson's conviction for unlawful possession of a firearm violates the Second Amendment.

a. Review is warranted.

The issue whether count 9, Mr. Peterson's conviction for unlawful possession of a firearm based on a prior conviction for a crime that does not qualify as a serious offense as defined in RCW 9.41.010(28), presents a a significant issue of constitutional magnitude under the Second Amendment to the U.S. Constitution, as interpreted by New York State Rifle & Pistol Ass'n v. Bruen, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), and its progeny. See, e.g. United States v.

Duarte, 101 F.4th 657, 663, 688 (9th Cir. 2021). Review is warranted under RAP 13.4(b)(3).

b. In violation of the Second Amendment to the United States Constitution, the court erred when it subjected Mr. Peterson to criminal punishment for possessing a firearm.

In Washington, a person with a felony conviction is subject to new felony charges - even after they have completed their term of community custody - if they possess a firearm. RCW 9.41.040(1), (2). But the People have the right to bear arms. The federal, and indeed the Washington state constitutions protect an individual's right to keep and bear arms. U.S. Const. amends. II, XIV; Const. art. I, § 24; McDonald v. City of Chicago, Ill., 561 U.S. 742, 791, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010). Recent federal case law has established that the Second Amendment applies in criminal cases involving firearm possession.

Like most rights, the right to keep and bear arms is not unlimited. District of Columbia v. Heller, 554 U.S. 570, 595, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). Consequently, the

State can infringe on the right, but only if the State has met certain exacting standards. See Bruen, 597 U.S. at 24. To assess whether a statute contravenes the Second Amendment, a court first examines whether the Second Amendment's "plain text covers an individual's conduct[.]" Id. The plain text of the Second Amendment reads as follows:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

U.S. Const. amend. II. Because the Amendment covers Mr. Peterson's asserted right - possessing firearms while having a felony conviction - "the constitution presumptively protects that conduct." Bruen, 597 U.S. at 16. Therefore the State bears the burden of proving that a restriction on the right to bear arms is consistent with this nation's historical tradition of firearm regulation. Bruen, at 17.

The State cannot so prove. The lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the

Second Amendment. Bruen, 597 U.S. at 26. In cases of similar offenses, federal courts have deemed firearm-based sanctions unconstitutional as applied. See United States v. LeBlanc, No. 23-cr-045, 2023 WL 8756694 (M.D. La. Dec. 19, 2023); United States v. Griffin, No. 21-cr-00693, 2023 WL 8281564 (N.D. Ill. Nov. 30, 2023).

Although the Court of Appeals has issued an opinion ruling that the Second Amendment does not apply to individuals with felony convictions, this Court should not follow this opinion, for several reasons. In State v. Ross, the defendant challenged his conviction for first degree unlawful possession of a firearm. State v. Ross, 28 Wn. App. 364, 365, 537 P.3d 1114 (2023). The State predicated the unlawfulness of the possession of the firearm on the defendant's previous conviction for burglary in the second degree. Ross, at 647. On appeal, the defendant argued that the statute criminalizing his possession of a firearm was unconstitutional as applied to him

because his previous conviction was for a nonviolent felony offense. Id.

The Court disagreed, noting that United States Supreme Court caselaw has repeatedly stated that law-abiding citizens have the right to possess a firearm. Ross, at 648. The Court relied on one particular passage in Heller, which stated that "nothing in [the] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill[.]" Ross, at 1115 (quoting Heller, 542 U.S. at 626-27). Relying on this language, the Court held the defendant had no right to possess firearms, rejected the as-applied challenge, and affirmed the conviction. Id. at 1118.

This Court should not rule in accord with Ross, nor State v. Bonaparte , 32 Wn. App. 2d 266, 554 P.3d 1245 (2024) (rejecting Bruen challenge to criminal sanction for possession of firearm based on prior conviction for first degree assault). The discussion the Ross Court relied on in Heller discussing felons was dicta, as it was unnecessary to the

resolution of the case. Prince, 2023 WL 7220127; accord, U.S. v. Bullock, 679 F.Supp.3d 501, 2023 WL 4232309, *14-18 (D.C. Miss. 2023). The Court's reliance on Heller's dicta was misplaced, as Heller explicitly held that the term, "the people" under the Second Amendment unambiguously refers to all members of the political community." Heller, 554 U.S. at 580.

Moreover, in light of Bruen's explication of historical tradition, Heller's reference to "longstanding prohibitions on the possession of firearms by felons" can only mean prohibitions in existence at the time of the founding. This harmonizes Heller's dicta and Bruen's ruling.

In Ross, the Court of Appeals did not undergo Bruen's two-step analysis when it concluded the Second Amendment did not apply to felons. This Court should hold the statutes that subject him to sanctions and punishment for owning a firearm are unconstitutional as applied to Mr. Peterson.

F. CONCLUSION

Based on the foregoing, Nathan Peterson asks that this Court grant review and reverse his judgment and sentence.

This pleading is prepared in font Times New Roman size 14 and contains 4,936 words.

DATED this 8th day of May, 2024.

Respectfully submitted,

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APPENDIX - COA DECISION

Filed
Washington State
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Division Two

April 8, 2025

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. NATHAN PETERSON, Appellant.	No. 58401-8-II UNPUBLISHED OPINION

CHE, J.—Nathan Peterson appeals his convictions for second degree unlawful possession of a firearm and four counts of possession of a controlled substance with intent to deliver while armed with a firearm, specifically challenging the findings that he committed the drug offenses while armed with a firearm.

Peterson led police on a high-speed pursuit. Later, officers searched the trunk of the car and found a loaded rifle and a backpack that contained drugs, a pistol magazine, and bullets, among other things. The jury found Peterson guilty of second degree unlawful possession of a firearm and four counts of possession of a controlled substance with intent to deliver while armed with a firearm.

Peterson argues that (1) insufficient evidence exists to prove that he possessed the rifle found in the trunk of the car, (2) insufficient evidence exists to prove that Peterson was armed

with a firearm during his drug offenses, and (3) his conviction for unlawful possession of a firearm violates the Second Amendment.

We hold that (1) sufficient evidence exists that Peterson possessed the rifle, (2) sufficient evidence exists that he committed the four counts of unlawful possession of a controlled substance with intent to deliver while armed with a firearm, and (3) Peterson's as-applied challenge to Washington's unlawful possession of a firearm statute fails.

Accordingly, we affirm Peterson's convictions.

FACTS

On an evening in November 2022, Austyn Cox and a passenger were driving in Port Angeles in Cox's sports car. Cox and a car in the adjacent lane stopped at a red light. When the light turned green, the car "took off," and Cox began racing the car. 1 Rep. of Proc. (RP) (May 1, 2023) at 257. At some point, the car drove closely behind Cox's vehicle, and Cox heard two gunshots. The car then passed him, and Cox called 911.

Deputy Steffen Estep saw the car drive past him at a high rate of speed and began pursuing the car. When Deputy Estep caught up to the car, it was traveling at 78 mph in a 45-mph zone, and Deputy Estep activated his marked patrol vehicle's emergency lights. The car did not pull over nor slow down. Deputy Estep continued pursuing the car, turned on his siren, and at one point, saw the car drive into an oncoming lane of traffic, forcing several cars off the road. At this time, the car was driving at approximately 90 mph. Deputy Estep continued his pursuit, which at times approached 100 mph.

At one point, a passenger threw items out of the car. Later, along the road, law enforcement recovered parts of a ".223 AR style" automatic rifle, two empty ammunition boxes,

a discarded backpack containing a cell phone that was receiving text messages upon recovery, a rifle magazine, shotgun shells, and both .223 and .22 caliber ammunition. 1 RP (May 2, 2023) at 497.

To stop the car, police deployed spike strips and performed two precision immobilization technique (PIT) maneuvers[1] before the car spun, flipped over, and landed upside down in a ditch. Officers at the scene removed Peterson, Scarlett Lynch, Mack Lefeaux, and Christopher Tavita.

Law enforcement towed the car right side up from the scene to a police evidence garage. Later, in December, officers obtained a search warrant and searched the car. Under the front passenger seat, they found an AR-15 magazine with 27 ".23 rounds" inside of it. 1 RP (May 2, 2023) at 376. When the officers opened the trunk, they immediately saw the buttstock of a rifle "sticking straight out" of the trunk as well as several backpacks. 1 RP (May 2, 2023) at 377, Exs. 29, 30. The rifle was a .22 Mossberg Plinkster. Officers removed one round from its chamber and six rounds from the magazine, and subsequent testing showed the rifle was operational.

Inside one of the backpacks in the trunk, officers found a fanny pack containing $9,386 in cash. Inside the same backpack, officers also found, among other things, large baggies containing approximately 1,000 blue fentanyl pills, a large number of needles, a pistol magazine containing eight rounds of 9mm ammunition, a large bag of 9mm bullets, a baggie containing many tiny baggies, a folding electronic scale, a bag containing several additional bags of blue fentanyl pills, 11.05 grams of cocaine, 19.32 grams of heroin, and 24.30 grams of

[1] A PIT maneuver is an attempt to disable a vehicle by using the front end of one vehicle to hit the back end of the other vehicle to spin it out and stop it.

methamphetamine. Officers also found drug paraphernalia outside of the backpack, in the trunk. Officers did not find any indicia of ownership inside the car.

Lynch testified at trial that prior to the police pursuit, she left her home, and Peterson drove them to a store. After the store, Peterson drove her to a motel to pick up two of his friends, Lefeaux and Tavita. Peterson then drove the group when they left the motel. Prior to leaving the motel, Peterson placed a backpack into the truck of the car, as shown by motel video surveillance footage.

Lynch sat in the back passenger seat of the car, and Tavita sat in the front passenger seat. While riding, Tavita fired a gun multiple times out the window with no warning. Lynch then asked to get out of the car multiple times. Lynch saw Tavita throw a gun out of the passenger side window. She testified that the gun was "big," had a laser pointer on it, and was like an automatic rifle. 1 RP (May 2, 2023) at 330.

Peterson testified that he did not know Tavita had a gun or that there were any guns in the interior of the car. Peterson saw Tavita fire a "black pistol," not an AR-15.[2] 2 RP (May 3, 2023) at 575. The AR-15 and pistol "came out of the backseat," and Peterson thought "[t]hey were in the backpack." 2 RP (May 3, 2023) at 576.

Peterson admitted to driving the car and owning a backpack, as well as its contents, found in the trunk. His backpack was near the .22 rifle and contained 9mm ammunition, about $10,000 in cash, $1,000 worth of fentanyl pills, $600 worth of methamphetamine, $1,000 worth of cocaine, and $1,000 worth of heroin. Peterson claimed that the drugs were for his personal use and that he did not sell drugs. Peterson agreed that the motel video surveillance footage showed

[2] Police did not recover a pistol.

him putting his backpack into the trunk of the car, but he denied owning any firearms and denied seeing the rifle in the trunk. Peterson also testified that Lefeaux and Tavita put items into the trunk after Peterson did and that Tavita drove the car before they arrived in Port Angeles. He acknowledged that he was aware of the box of ammunition in the car.

The State charged Peterson by third amended information with, among other crimes, second degree unlawful possession of a firearm and four counts of possession with intent to deliver a controlled substance (fentanyl, methamphetamine, cocaine, and heroin), each of the four counts committed while armed with a firearm.[3, 4] The jury found Peterson guilty of these crimes.[5]

Peterson appeals.

ANALYSIS

I. SUFFICIENCY OF THE EVIDENCE

A. *Legal Principles*

When determining whether the evidence is sufficient to sustain a conviction, we examine whether, after viewing the evidence in the light most favorable to the State, "'any rational trier of fact could have found the essential elements of [the crime] beyond a reasonable doubt.'" *State v.*

[3] The State also charged Peterson with two counts of second degree assault while armed with a firearm, attempting to elude a pursuing police vehicle with a special allegation of endangerment by eluding, and unlawful imprisonment. The jury found Peterson not guilty of second degree assault and guilty of the remaining charges, including all special allegations. On appeal, Peterson does not challenge these convictions.

[4] Peterson stipulated at trial that he had a prior non-serious offense felony conviction.

[5] On appeal, Peterson does not challenge the possession of a controlled substance with intent to deliver portion of his convictions but rather, the findings that he committed the drug offenses while armed with a firearm.

Bertrand, 3 Wn.3d 116, 139, 546 P.3d 1020 (2024) (quoting *State v. Hampton*, 143 Wn.2d 789, 792, 24 P.3d 1035 (2001) (emphasis omitted) (alteration in original)).

A challenge to the sufficiency of the evidence necessarily admits the truth of the State's evidence and all reasonable inferences drawn from the evidence. *State v. Bergstrom*, 199 Wn.2d 23, 41, 502 P.3d 837 (2022). We view circumstantial and direct evidence as equally reliable. *State v. Restvedt*, 26 Wn. App. 2d 102, 116, 527 P.3d 171 (2023). We defer to the trier of fact on issues of the persuasiveness of evidence, witness credibility, and conflicting testimony. *Bergstrom*, 199 Wn.2d at 41.

B. *Sufficient Evidence Exists for Unlawful Possession of a Firearm*

Peterson argues that insufficient evidence exists to prove beyond a reasonable doubt that he possessed the rifle found in the trunk of the car. Specifically, Peterson contends that the State "never met the standard for constructive possession." Br. of Appellant at 10. He asserts close proximity alone is not enough to establish constructive possession of a firearm and merely showing dominion and control over the car does not itself prove dominion and control over the firearm. We disagree that insufficient evidence exists to prove Peterson's unlawful possession of a firearm.

Washington's unlawful possession of a firearm statute provides that a person is guilty of second degree unlawful possession of a firearm if the person does not qualify for the crime of first degree unlawful possession of a firearm and "owns, accesses, has in the person's custody, control, or possession, or receives any firearm . . . [a]fter having previously been convicted . . . in this state or elsewhere of . . . any felony not specifically listed as prohibiting firearm possession" under the first degree unlawful possession of a firearm subsection. RCW 9.41.040(2)(a)(i)(A).

Possession can be actual or constructive. *State v. Flores*, 18 Wn. App. 2d 486, 494, 492 P.3d 184 (2021). A defendant actually possesses an item if it is in their "'personal custody.'" *Id.* (quoting *State v. Staley*, 123 Wn.2d 794, 798, 872 P.2d 502 (1994)).

To determine whether a defendant constructively possessed an item, we examine whether, under the totality of the circumstances, the defendant exercised dominion and control over said item. *See State v. Listoe*, 15 Wn. App. 2d 308, 326, 475 P.3d 534 (2020). The ability to immediately take actual possession of an item can establish dominion and control. *Id.* at 326-27. In addition, ownership of the item and, in some circumstances, ownership of the premises are factors supporting dominion and control. *Id.* at 327. But having dominion and control over the premises where the item was found does not, by itself, establish constructive possession. *See id*. For purposes of this inquiry, a vehicle is a "premises." *State v. Turner*, 103 Wn. App. 515, 521, 13 P.3d 234 (2000).

The State must show more than proximity alone to establish constructive possession. *State v. Lee*, 158 Wn. App. 513, 517, 243 P.3d 929 (2010). Thus, a defendant with prior felony convictions "may not be in violation of the law by simply being near a firearm" if they have not exercised dominion or control over the firearm or premises where it is found. *Id*.

"[U]nwittingly having a firearm located close enough to a person who could reduce it to their control is sufficient to establish constructive possession." *Flores*, 18 Wn. App. 2d at 494. In addition, courts have found sufficient evidence of constructive possession, and dominion and control, in cases where the defendant was "either the owner of the premises or the driver/owner of the vehicle where contraband was found." *State v. Chouinard*, 169 Wn. App. 895, 900, 282 P.3d 117 (2012).

Here, the facts show more than Peterson's close proximity to the rifle and his dominion and control over the car. Peterson drove the car after picking up Lynch at her home, drove Lynch to the store, drove the car to the motel to pick up two other passengers, and then drove the car when leaving the motel. Prior to leaving the motel, Peterson put his backpack containing a significant amount of drugs, money, drug paraphernalia, and 9mm bullets into the car trunk, which showed he used the trunk to store his personal items. When Peterson accessed the trunk, this showed he was close enough to the .22 rifle to reduce it to his control.

Peterson claimed ownership of his backpack in the trunk, which contained a bag of 9mm bullets and a magazine with 9mm ammunition even though he denied owning any firearms himself. Peterson denied knowledge of any firearms inside the car, but he claimed Tavita fired a pistol and that the pistol and AR-15 rifle came from a backpack from the backseat. While police did not recover any pistol, they did recover from along the road parts of an automatic rifle with a light and scope, and a discarded backpack containing a rifle magazine, shotgun shells, and both .223 and .22 caliber ammunition. Inside the car, police found a loaded AR-15 magazine, and inside the trunk, police found the .22 rifle. Though Peterson testified to evidence that cast doubt on his possession of the .22 rifle, we defer to the jury on issues of the persuasiveness of evidence, witness credibility, and conflicting testimony. *Bergstrom*, 199 Wn.2d at 41. Based on these facts, viewed in the light most favorable to the State, a jury could find beyond a reasonable doubt that Peterson possessed the .22 rifle in the trunk of the car.

Next, Peterson asserts that he was not the owner or renter of the car. Ownership of the car is relevant but not necessarily dispositive, especially where the defendant was the driver and not a passenger. *See Turner*, 103 Wn. App. at 523-34; *see also Listoe*, 15 Wn. App. 2d at 327.

And as explained above, the State did not need to prove that Peterson owned the car to have constructive possession of its contents.

Peterson likens his case to *Chouinard*. In *Chouinard*, the defendant was a passenger in the backseat of a car. 169 Wn. App. at 897. Chouinard knew a firearm was behind the backseat. *Id.* at 898. However, we concluded that the evidence was insufficient to prove constructive possession because there were other occupants in the car, and there was no evidence Chouinard was in control of the car or firearm. *Id.* at 900-03. We held that knowledge of and proximity to a firearm were insufficient to prove constructive possession where the defendant did not have dominion and control over the vehicle. *Id.* at 902-03. But in that case, Chouinard was a mere passenger in the vehicle, not the driver, and courts have distinguished cases in which the defendant was the driver. *Id.* at 900-03. *Chouinard* does not control here because Peterson was the driver.

In examining the totality of the circumstances and viewing the evidence in the light most favorable to the State, we hold that a rational jury could find from the evidence that Peterson constructively possessed the .22 rifle. Therefore, Peterson's sufficiency of the evidence challenge fails.

C. *Sufficient Evidence Exists to Prove Peterson Committed the Drug Offenses While Armed With a Firearm*

Peterson contends that insufficient evidence exists to prove that he was armed with a firearm during his drug offenses. We disagree.

"[A]dditional times shall be added to the standard sentence range for felony crimes . . . if the offender . . . was armed with a firearm." RCW 9.94A.533(3).

We review de novo whether the facts are sufficient as a matter of law to prove that a defendant was armed during the crime. *State v. Sassen Van Elsloo*, 191 Wn. 2d 798, 825, 425 P. 3d 807 (2018). For the State to establish that a defendant was armed for the purpose of a firearm enhancement, it must prove "(1) that a firearm was easily accessible and readily available for offensive or defensive purposes during the commission of the crime and (2) that a nexus exists among the defendant, the weapon, and the crime." *Id.* at 826. "[W]hen the crime is of a continuing nature, such as a drug operation, a nexus exists if the firearm is 'there to be used' in the commission of the crime." *Id.* at 828 (quoting *State v. Gurske*, 155 Wn.2d 134, 138, 118 P.3d 333 (2005)).

The close proximity, presence, or constructive possession of a firearm at the crime scene is, alone, insufficient to show that the defendant was armed for the purpose of a firearm enhancement. *Id.* at 826. "A defendant 'does not have to be armed at the moment of arrest to be armed for purposes of the firearms enhancement,' and the State 'need not establish with mathematical precision the specific time and place that a weapon was readily available and easily accessible, so long as it was at the time of the crime.'" *Id.* at 826-27 (quoting *State v. O'Neal*, 159 Wn.2d 500, 504-05, 150 P.3d 1121 (2007)).

First, Peterson asserts there was "no ready accessibility for use." Br. of Appellant at 20. Peterson argues that his case is like *State v. Gurske*, 155 Wn.2d 134, 118 P.3d 333 (2005).

In *Gurske*, the parties submitted stipulated facts, and the trial court convicted Gurske of possession of a controlled substance while armed with a pistol that officers found in a zipped-up backpack in the back seat of the defendant's truck. *Id.* at 136-37. The Supreme Court determined that the pistol was not easily accessible and readily available because the backpack

was zipped, and Gurske could not remove the pistol unless he first exited the truck or moved into the passenger seat, unzipped the backpack, and removed a torch that was on top of the pistol. *Id.* at 143-44. The court vacated the weapon enhancement, concluding that no nexus existed between the pistol and the crime because the State presented no evidence that Gurske "had used or had easy access to use the weapon against another person at any other time," such as when he acquired or was in possession of the drug. *Id.* at 143.

But here, the State presented evidence that the .22 rifle was easily accessible and readily available to Peterson when he possessed the drugs with intent to deliver, and that there was a nexus among the defendant, the crime, and the rifle. Peterson does not dispute that he committed the four unlawful possession of a controlled substance with intent to deliver offenses. Rather, he challenges the findings that he committed the drug offenses while armed with a firearm. The .22 rifle was located in the car trunk near his backpack containing the drugs with the buttstock of the rifle sticking up. It had one bullet in the chamber and six in the magazine, and subsequent testing showed the rifle was operational. The rifle was not kept in a lock safe or case, so it could easily be grabbed by someone as they accessed the drugs in the backpack. This is sufficient to support the conclusion that the firearm was "'there to be used'" in the commission of the drug offenses. *Sassen Van Elsloo*, 191 Wn.2d at 828 (quoting *Gurske*, 155 Wn.2d at 138).

Motel video surveillance footage showed Peterson putting his backpack containing a large amount of illegal drugs into the trunk. Evidence also showed that Peterson attempted to elude the police. Given the volume of drugs in the trunk, the location of the .22 rifle in the trunk, and Peterson's prior access to the trunk for storage of his personal belongings, a reasonable inference is that the rifle in the trunk was easily accessible and readily available to Peterson at

the time he committed the crimes. There is considerable circumstantial evidence that the .22 rifle was there to protect the criminal enterprise, and that it was easily accessible and readily available when Peterson possessed the drugs with intent to deliver.

Taking the evidence in the light most favorable to the State, we hold that sufficient evidence exists to prove that the .22 rifle was easily accessible and readily available, and that there was a nexus among Peterson, the rifle, and the commission of the drug offenses.

II. SECOND AMENDMENT CHALLENGE

Peterson raises an as-applied challenge, alleging that under *New York State Rifle & Pistol Ass'n v. Bruen*,[6] (*New York State Rifle*), his conviction for unlawful possession of a firearm violates the Second Amendment because the State has failed to prove "that a restriction on the right to bear arms is consistent with this nation's historical tradition of firearm regulation." Br. of Appellant at 27. We disagree and abide by our reasoning in *State v. Ross*, 28 Wn. App. 2d 644, 537 P.3d 1114 (2023), *review denied*, 2 Wn.3d 1026 (2024), and *State v. Bonaparte*, 32 Wn. App. 2d 266, 554 P.3d 1245 (2024).

A. *Legal Principles*

We review the constitutionality of a statute de novo. *State v. Batson*, 196 Wn.2d 670, 674, 478 P.3d 75 (2020). We presume statutes are constitutional, and it is the challenger's burden to prove otherwise. *Id.*. An as-applied challenge, such as the one Peterson asserts here, requires us to examine the statute in the specific circumstances of the case. *Ross*, 28 Wn. App. 2d at 646. When a court holds a statute unconstitutional as applied to a challenger, this does not

[6] 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022).

invalidate the statute but "prohibits its application in that specific context and future similar contexts." *Id.*

The Second Amendment to the United States Constitution states, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." The Second Amendment protects the right of "ordinary, law-abiding citizen[s]." *New York State Rifle*, 597 U.S. at 9. But the right to bear arms has limits, which include "longstanding prohibitions on the possession of firearms by felons." *District of Columbia v. Heller*, 554 U.S. 570, 626, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008).

B. *Peterson's Second Amendment Claim Fails*

In *Ross*, Division One of this court examined recent United States Supreme Court jurisprudence on the constitutionality of certain restrictions on the possession of firearms. 28 Wn. App. 2d at 647-50. The court noted that, in *Heller*, the Supreme Court explicitly recognized and affirmed restrictions on firearm possession by felons by stating that "'nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons.'" *Id.* at 647 (quoting *Heller*, 554 U.S. at 626-27).

After *Heller*, in *McDonald v. City of Chicago*, the Supreme Court acknowledged that, "'[w]e made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as 'prohibitions on the possession of firearms by felons,'" and "repeat[ed] those assurances." 561 U.S. 742, 785, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (plurality opinion) (citation omitted) (quoting *Heller*, 554 U.S. at 626-627).

Later, in *New York State Rifle*, the Court considered a licensing scheme regarding the right to carry handguns in public for self-defense. 597 U.S. at 11. Division One concluded that

the Supreme Court continued to affirm the longstanding restrictions on possession of firearms by felons, stating:

> Relevant here, *N.Y. State Rifle* did not overrule, or cast doubt on, the Court's recognition in *Heller* and *McDonald* that the Second Amendment did not preclude prohibitions on felons possessing firearms. The six-justice majority opinion fully embraced the earlier decisions in *Heller* and *McDonald* that the Second and Fourteenth Amendments protect the right of "ordinary, law-abiding citizens to possess a handgun in the home for self-defense." Indeed, at least 11 times the majority referenced the Second Amendment right of "law-abiding" citizens.

Ross, 28 Wn. App. 2d at 649 (emphasis omitted) (citation omitted). Thus, Division One held that "consistent with *Heller*, *McDonald*, and *New York State Rifle*, the Second Amendment does not bar the State from prohibiting the possession of firearms by felons." *Id.* at 651.

Peterson acknowledges *Ross* but nonetheless asks this court to not adhere to it. He asserts that *Ross's* "reliance on *Heller's* dicta was misplaced" and more specifically, that *Heller's* "reference to 'longstanding prohibitions on the possession of firearms by felons' can only mean prohibitions in existence at the time of the founding." Br. of Appellant at 32, 33. Peterson's assertion is premised on his assumption that *Heller* and *New York State Rifle* are somehow inconsistent with each other. But as the court in *Ross* concluded, *New York State Rifle* "did not overrule, or cast doubt on, the Court's recognition in *Heller* . . . that the Second Amendment did not preclude prohibitions on felons possessing firearms." *Ross*, 28 Wn. App. 2d at 649. Indeed, *New York State Rifle* made the constitutional standard endorsed in *Heller* "more explicit" and then applied that standard. *New York State Rifle*, 597 U.S. at 31.

Most recently, we examined the constitutionality of firearm restrictions on felons in *Bonaparte*, where the defendant argued that the State must prove a "historical tradition of depriving a person of the right to possess a firearm based on a prior conviction for assault in the

first degree" for such restrictions to be constitutional under the Second Amendment. 32 Wn. App. 2d at 271 (internal quotation marks omitted).

We examined *Heller*, *McDonald*, and *New York State Rifle*, before considering *United States v. Rahimi*,[7] a Second Amendment decision by the United States Supreme Court. *Bonaparte*, 32 Wn. App. 2d at 271-74. In *Rahimi*, the Supreme Court analyzed a federal statute that prohibits the restrained party under a domestic violence restraining order from possessing a firearm. 144 S. Ct. at 1894. Despite the difference in context, a restraining order versus a felony conviction, *Rahimi* affirmed that restrictions on the possession of firearms by felons are presumptively lawful. *Id.* at 1902.

Indeed, *Bonaparte* highlighted the Supreme Court's "repeated articulation that prohibitions on the possession of firearms by felons are presumptively lawful or more general language that the Second Amendment right to keep and bear arms is 'not unlimited.'" 32 Wn. App. 2d at 278 (quoting *Heller*, 554 U.S. at 595). Among other things, we held that "the framework articulated in *New York State Rifle* of the government's need to demonstrate that a firearm restriction is 'consistent with this Nation's historical tradition' applies to restrictions on a *law-abiding citizen's right to bear arms*" and was not applicable to Bonaparte's case because he had previously been convicted of a felony. *Id.* at 276 (emphasis added). Likewise, here, Peterson is a convicted felon, so the "historical tradition" framework articulated in *New York State Rifle* does not apply to his challenge. Therefore, we hold that Peterson's as-applied challenge to Washington's unlawful possession of a firearm statute fails.

[7] 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024).

CONCLUSION

We hold that (1) sufficient evidence exists that Peterson possessed the rifle, (2) sufficient evidence exists that Peterson committed the four counts of unlawful possession of a controlled substance with intent to deliver while armed with a firearm, and (3) Peterson's as-applied challenge to Washington's unlawful possession of a firearm statute fails.

Accordingly, we affirm Peterson's convictions.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Che, J.

We concur:

Lee, J.

Cruser, C.J.

WASHINGTON APPELLATE PROJECT

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