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No. 58961-3-II

Case #: 1045697

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON

V.

JIMMY PHIPPS

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PETITION FOR REVIEW

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#### A. Identity of Petitioner

Jimmy Phipps asks this Court to accept review of the Court of Appeals decision terminating review designated in Part B of this petition.

#### B. Court of Appeals Decision

On August 26, 2025, the Court of Appeals issued its decision affirming Mr. Phipps' conviction for unlawful possession of a firearm in the second-degree. A copy of the decision is attached at Appendix A.

#### C. Issues Presented for Review

Should this Court grant review of a decision concluding Mr. Phipps lost his Second Amendment right to possess a firearm upon his conviction for Hit and Run-Injury Accident?

#### D. Statement of the Case

Jimmy Phipps was charged with one count of unlawful possession of a firearm in the second-degree. CP, 1. Prior to trial, he moved to dismiss arguing he had a Second Amendment right to possess a firearm. CP, 4. The trial court denied the motion. CP,

68. Mr. Phipps then submitted his case on a stipulated record. CP, 70. The court found him guilty. CP, 71. He timely appealed. CP, 90.

Jimmy Phipps was convicted on June 26, 2002 of Hit & Run-Injury Accident in violation of RCW 46.52.020(3) for an incident that occurred in 1998. CP, 75. He was sentenced to 12 months and a day. CP, 76.

Mr. Phipps was contacted by Mason County Sheriff's Deputy Carney on November 18, 2022. CP, 73. A resident of Harstine Island had called in saying that there were two hunters trespassing on her property. Deputy Carney went to Jimmy Phipps residence, contacted, and questioned Jimmy Phipps, as well as his brother Billy Phipps, who was also present. CP, 73. There was a Savage Arms 30/30 hunting rifle on the porch. CP, 73. Both men admitted hunting on Harstine Island. CP, 73. Jimmy Phipps stated he was hunting with the Savage Arms 30/30 hunting rifle. CP, 74. Deputy Carney determined Jimmy Phipps was a convicted felon and placed him under arrest. CP, 74.

On appeal, Mr. Phipps again raised a Second Amendment challenge. He argued that Hit & Run – Injury Accident does not fit within the “Nation’s historical tradition of firearm regulation” and Mr. Phipps should not have lost his firearm rights as a result of that conviction. Mr. Phipps brought an as-applied challenge to the statute, arguing whether a person’s firearm rights are terminated should hinge on whether the underlying felony was violent or non-violent. The Court of Appeals rejected this proposition, relying on its recent decision, *State v. Koch*, 34 Wn. App. 2d 232, 567 P.3d 653 (2025). The Court said, “[W]e concluded that the Second Amendment does not protect convicted felons, regardless of their type of felony conviction.”

#### E. Argument Why Review Should be Granted

This Court has recently granted review of a case involving substantially the same issue. *State v. Hamilton*, 104072-5. Mr. Hamilton was convicted of Vehicular Homicide- Disregard for the Safety of Others, a non-violent offense.

Mr. Phipps possessed and used his hunting rifle in his private residence and for the purpose of hunting. These are purposes traditionally protected by the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct 2783, 171 L.Ed.2d 637 (2008).

In 2022, the United States Supreme Court decided *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. 1, 142 S.Ct. 2111, 213 L.Ed.2d 387 (2022). *Bruen* held that when a firearm regulation is challenged under the Second Amendment, the burden is on the Government to show that the restriction “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen* at 24. A court must ascertain whether the new law is “relevantly similar” to laws that our tradition is understood to permit, “apply[ing] faithfully the balance struck by the founding generation to modern circumstances.” *Bruen* at 29, and n. 7. Why and how the regulation burdens the right are central to this inquiry. As *Bruen* explained, a challenged regulation that

does not precisely match its historical precursors “still may be analogous enough to pass constitutional muster.” *Bruen* at 30.

On June 21, 2024, the Supreme Court had its first opportunity to apply the *Bruen* holding in a criminal context. *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024). Rahimi was the subject of a civil protection order in Texas. The protection order prohibited him from contacting or harassing his intimate partner and found he was credible threat to the physical safety of his intimate partner. *Rahimi* at 3-4. Rahimi was later found in possession of a firearm and indicted in federal court for violating 28 U.S.C. 922(g)(8). He moved to dismiss the Indictment on Second Amendment grounds, bringing a facial challenge to the statute. The District Court denied the motion, but the Court of Appeals for the Fifth Circuit reversed. The Supreme Court granted certiorari and reversed the Fifth Circuit.

Whether Mr. Phipps is lawfully allowed to possess a firearm will be controlled by *State v. Hamilton*. Both Mr. Phipps



and Mr. Hamilton were convicted of non-violent traffic felonies. Firearm regulation for non-violent traffic offenses are not “consistent with the Nation’s historical tradition of firearm regulation.”

F. Conclusion

This Court should grant review, reverse and dismiss Mr. Phipps conviction for unlawful possession of a firearm in the second degree.

This Petition for Review is in 14-point font and contains 876 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 11<sup>th</sup> day of September, 2025.

*Thomas E. Weaver*

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Thomas E. Weaver, WSBA #22488  
Attorney for Appellant

# Appendix A

August 26, 2025

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JIMMY CARRELL PHIPPS,

Appellant.

No. 58961-3-II

UNPUBLISHED OPINION

CHE, J. — Jimmy Carrell Phipps appeals his conviction of second degree unlawful possession of a firearm (UPFA). Phipps argues RCW 9.41.040(2)(a)(i) violates his Second Amendment rights under the United States Constitution as applied to him based on having a prior nonviolent felony conviction.

We hold that RCW 9.41.040(2)(a)(i) is not unconstitutional as applied to Phipps under the Second Amendment. Accordingly, we affirm Phipps’s conviction.

**FACTS**

In 2022, law enforcement responded to a report of two hunters armed with rifles trespassing on the caller’s property. The caller believed one of the hunters was her neighbor, Phipps. Phipps admitted to a deputy sheriff that he hunted on the neighbor’s property with his

rifle. The deputy determined that Phipps had a prior felony conviction for hit and run injury<sup>1</sup> and that Phipps had not reinstated his right to possess a firearm.

Phipps moved to dismiss his charge under both the United States and Washington constitutions. The trial court denied his motion to dismiss. Phipps submitted his case on a stipulated record. The trial court found Phipps guilty of UPFA pursuant to RCW 9.41.040(2)(a)(i).

Phipps appeals.

### ANALYSIS

Phipps raises an as-applied constitutional challenge and argues his UPFA conviction violated his Second Amendment rights. However, pursuant to current Second Amendment jurisprudence, we disagree.

We review constitutional challenges de novo. *State v. Ross*, 28 Wn. App. 2d 644, 646, 537 P.3d 1114 (2023), *review denied*, 2 Wn.3d 1026 (2024). We presume statutes are constitutional, and the challenger bears the burden of proving that a statute is unconstitutional beyond a reasonable doubt. *State v. Reynolds*, 12 Wn. App. 2d 181, 184, 457 P.3d 474 (2020); *Ross*, 28 Wn. App. 2d at 646.

Phipps contends his hit and run injury conviction does not comport with the nation's historical tradition of firearm regulation because it is not analogue to any regulations recognized by the founding generation. Phipps contends that *United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 219 L. Ed. 2d 351 (2024), requires the appellate courts to conduct a felony-by-felony

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<sup>1</sup> Phipps previously pleaded guilty to “Hit and Run – Injury” for acts occurring in 1998, violating RCW 46.52.020. Clerk’s Papers at 75. Under RCW 46.52.020, a person commits a class C felony if (1) they drove a motor vehicle in this state, (2) the vehicle was involved in an accident, (3) an injury or death of a person resulted from the accident, and (4) the driver of the vehicle did not stop immediately and remain at the scene of the accident until fulfilling certain duties. *State v. Komoto*, 40 Wn. App. 200, 206, 697 P.2d 1025 (1985); *see also* RCW 42.52.020(1), (3), (4)(b).

analysis for the federal felon in-possession statute. He also asserts his prior felony offense does not pose a clear threat of physical violence under *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), and *Rahimi*.

Recently, we considered substantively similar arguments in the published portion of our opinion in *State v. Koch*, 34 Wn. App. 2d 232, 567 P.3d 653 (2025). In *Koch*, the defendant argued that his UPFA conviction, as applied to him, violated his Second Amendment rights based on prior nonviolent felony convictions. *Id.* at 235. Koch had previously been convicted of forgery, possession of stolen property, and identity theft. *Id.*

Our court considered the question of “whether a statute prohibiting a person convicted of nonviolent felonies from possessing a firearm violates the Second Amendment. *Id.* at 242. After considering Second Amendment jurisprudence, including *Bruen*, *Rahimi*, and four Washington cases spanning our court’s three divisions,<sup>2</sup> we concluded that the Second Amendment does not protect convicted felons, regardless of their type of felony conviction. *See id.* (“We conclude that the Second Amendment does not protect convicted felons, who by definition are not law-abiding citizens.”). We reasoned that, consistent with the current federal and state Second Amendment jurisprudence, convicted felons are definitionally not law-abiding citizens, and, thus, do not fall within the category of people the Second Amendment protects. *Id.* at 243. Concluding such, we held that Koch’s UPFA conviction did not violate the Second Amendment. *Id.* at 244.

Because Phipps had a prior felony conviction and he did not have his firearm rights reinstated, Phipps was not a law-abiding citizen at the time he possessed the firearm. Therefore,

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<sup>2</sup> We considered the following Washington opinions: *State v. Ross*, 28 Wn. App. 2d 644, 537 P.3d 1114 (2023), *review denied*, 2 Wn.3d 1026 (2024); *State v. Bonaparte*, 32 Wn. App. 2d 266, 554 P.3d 1245 (2024), *review denied*, 4 Wn.3d 1019 (2025); *State v. Olson*, 33 Wn. App. 2d 667, 565 P.3d 128 (2025); and *State v. Hamilton*, 33 Wn. App. 2d 859, 565 P.3d 595 (2025).

like the defendant in *Koch*, Phipps did not fall within the class of those protected by the Second Amendment because he was not a law-abiding citizen. *See id.* at 243 (“[F]elons – who are not law-abiding citizens – are not among the class of people that the Second Amendment covers.”).

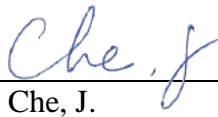
Nevertheless, Phipps contends that *Rahimi* requires the appellate courts to conduct a felony-by-felony analysis for the federal felon in-possession statute by citing to several federal cases that the Supreme Court vacated and remanded for reconsideration in light of *Rahimi*. However, we decline to assume, as Phipps requests, that we should interpret the Supreme Court’s mere remand of these cases as an expression of its view that a felony-by-felony analysis is required.

We hold that Phipps’s conviction for UPFA does not violate the Second Amendment.

#### CONCLUSION


Accordingly, we affirm Phipps’s conviction.

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:

  
\_\_\_\_\_  
Cruiser, C.J.

  
\_\_\_\_\_  
Price, J.

**THE LAW OFFICE OF THOMAS E. WEAVER**

**September 11, 2025 - 1:42 PM**

**Transmittal Information**

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