

The victim in a Vancouver murder-suicide had a protection order but Clark County judges say the law doesn't let them take guns from abusers

State's courts at odds over forcing surrender of arms after Flannery decision

By Jessica Prokop, Columbian Local News Editor

Published: August 12, 2024, 6:05am



Baylee Gonzales embraces the daughter of Carissa Larkin on the morning of July 25 as first responders work at the scene of a murder-suicide in central Vancouver that left Larkin dead. (Amanda Cowan/The Columbian files) [Photo Gallery](#)



Carissa Larkin (Photo contributed by Baylee Gonzales) **Photo**

Carissa Larkin feared for her life after obtaining a civil domestic violence protection order in April against her former fiancé.

In her petition, Larkin, 32, wrote that Kyle Palmer owned firearms: “I am unsure of what Kyle is capable of but fear retaliation.”

On July 25, he shot her to death, then himself, in the parking lot of her central Vancouver apartment complex. The mother of three was holding her 4-year-old son, who was grazed by a bullet. The child left a trail of blood behind him as he fled the grisly scene.

Even though the protection order prohibited Palmer, 38, from possessing firearms, the court never demanded he surrender them.

That’s because in May 2023, about a year before Larkin sought protection, the Clark County Superior Court bench stopped ordering people subject to civil protection orders to surrender their weapons. The change stems from a Washington Court of Appeals ruling in a Kitsap County domestic violence case, known colloquially as the Flannery decision.

The decision has created confusion and inconsistency across the state’s Superior Courts — and putting some victims, including those in Clark County, more at risk.

Clark County's presiding judge says the bench is legally bound to follow the higher court's decision. Domestic violence victim advocates and attorneys say the county court's interpretation of the Flannery decision is wrong and endangers survivors.

"When you know firearms are involved, but courts aren't ordering that the firearms be surrendered, I think it's an injustice to the victims," said Michelle Bart, founder of the National Women's Coalition Against Violence & Exploitation. "You tell me a woman (has) been granted a protective order, and you're not going to do anything in order to make sure that she's safe and her children are safe?"

Flannery decision

Dwayne Allen Flannery was ordered to surrender his firearms by a Kitsap County Superior Court judge in a 2019 domestic violence assault case. He refused and claimed the order violated his Fourth and Fifth Amendment rights against unreasonable search and seizure and self-incrimination. He argued if he surrendered his weapons, he'd be admitting to possessing them when he legally wasn't allowed to under the no-contact order in the case.

In a November 2022 decision, the state Court of Appeals sided with Flannery, and the weapons surrender order was dropped.

The Washington Legislature in 2023 passed a bill to resolve uncertainties raised by the Flannery case. House Bill 1715 outlined a number of domestic violence victim protections, including one that built on the Tiffany Hill Act, the 2020 electronic monitoring law named after the Clark County mother and Marine sergeant who was fatally shot by her estranged husband. HB 1715 took effect in July 2023.

Despite this so-called Flannery fix, Clark County Superior Court has not changed its current procedure.



Michelle Bart of National Women's Coalition Against Violence & Exploitation takes a break in her downtown Vancouver office on Thursday afternoon. (Amanda Cowan/The Columbian) **Photo**

Presiding Judge Derek Vanderwood said the legislative change related to Flannery only partially addresses the Fifth Amendment issue of self-incrimination, in that a person cannot be prosecuted for certain crimes pursuant to a weapons surrender. Additionally, the legislation does not address the Fourth Amendment concerns, he said.

"Our interpretation of Flannery is that a person can be legally restricted from possession (of) firearms, but their Fourth and Fifth Amendment rights may be violated by the surrender process itself rather than by the restriction alone," Vanderwood said in an email on behalf of the bench. "We continue to order firearm restrictions, but have not entered the standalone order to surrender."

Those restrictions state the respondent is prohibited from "accessing, possessing, having in their custody or control, purchasing, receiving, or attempting to purchase or receive firearms, other dangerous weapons or concealed pistol licenses."

Conflicting practices

Other counties made similar changes after Flannery, [according to reporting by InvestigateWest](#). But King County continues to issue weapons surrender orders. Presiding King County Superior Court Judge Ketu Shah said the Fourth Amendment issue hasn't been raised there.

If a respondent or defendant asserts their Fifth Amendment right, the court has them fill out a form stating they are invoking that right. He said the issue is not often raised on the civil side, more so in criminal cases. The King County Prosecuting Attorney's Office is also not filing criminal charges against people who don't surrender their firearms, he said. Instead, prosecutors may come back to the court to ask for a hearing on the issue.

"From our position, we believe the law requires it, authorizes it, so when the state or petitioner asks, we see if it meets the legal threshold and issue an order to surrender weapons. If the defendant or respondent object, we respect that process," Shah said.

"For us, we just try to follow the law and do our best to interpret it as we see fit. And this is what we're doing right now."

Vanderwood, Clark County's presiding Superior Court judge, said the local bench analyzed the Flannery decision and its implications on weapons surrender orders before making any changes.

"My view is this is not a policy that we have adopted to apply because we personally think it's the best approach, the most correct approach, that it leads to the best results. That's not the analysis that we've had," Vanderwood said. "Our analysis is based on the laws that exist, that it applies and how that law then impacts our determination."

The Clark County court asked the state's Administrative Office of the Courts for guidance about Flannery, said Commissioner Christine Hayes, who was just appointed as the court's 12th judge. And some judicial officers participated in a statewide civil protection order workgroup that discussed the issue.

"We are doing this because we believe that is the interpretation of what the law requires," Hayes said.

At odds with the court

Still, domestic violence victim advocates and attorneys are at odds with the Clark County court's interpretation.

"Our program disagrees that Flannery creates a problem for the court. We're not very enthusiastic about the court relying on this (Administrative Office of the Courts) research in making this decision as to firearms and whether the orders of surrender should be happening," said Jeffrey Keddie, managing attorney for Northwest Justice Project's Vancouver office.

Keddie said his office believes the Legislature's fix is sufficient to protect the rights of people who are seen as credible threats.

His office has raised the issue at the county's civil protection order stakeholder meetings and asked whether the court plans to revisit it.

“We really are trying to be actively in communication with stakeholders as to what best practices for this should look like,” Hayes said, adding that’s why the group was created, to try to ensure protections are being afforded to domestic violence survivors. “We are continuing to evaluate case law as it changes ... to make sure we’re performing our duties as prescribed by law and ensuring we are providing the protections as required by law.”

For instance, a recent U.S. Supreme Court decision in *United States v. Rahimi* upheld a decades-old federal law that prohibits firearms possession by domestic violence abusers who pose a credible threat to the physical safety of an intimate partner.

Vanderwood said the county bench is discussing how the *Rahimi* case affects the surrender of firearms process. However, he noted *Rahimi* largely focused on the Second Amendment, not the Fourth and Fifth Amendment issues raised by *Flannery*.

“I’m glad they are revisiting it. I would like them to change that policy,” Keddie said. “I think that it’s important folks who are seen as a credible threat to their partners have to surrender their firearms. I think it’s imperative. When there is a significant risk and someone has a firearm there is a much greater risk of lethality.”

‘We need consistency’

According to the Washington State Coalition Against Domestic Violence, 45 percent of domestic violence homicides occur within the first 90 days following separation. And the presence of firearms increases the risk of lethality by 500 percent.

Spokeswoman Elizabeth Montoya said the coalition has heard from member programs and advocates from across the state about the *Flannery* issue.

“It’s unfortunate that different courts and counties across the state are taking that opportunity, that confusion, to kind of use their discretion on what to do,” Montoya said. “We need consistency, we need follow through.

...

We need the courts to put this into practice and actually get firearms out of the hands of abusers.”

According to a [report released Thursday by Everytown for Gun Safety](#) that looks at domestic homicide-suicides with a firearm, survivors in the nonprofit’s focus groups said nearly 25 percent of the perpetrators were prohibited by law from possessing a firearm, including being under a domestic violence protection order.



New appointed Clark County Superior Court Judge Christine Hayes **Photo**

The report says states that prohibit people subject to domestic violence protection orders from possessing firearms have seen a 13 percent decrease in intimate partner firearm homicide rates.

“The No. 1 factor is, how are we going to keep that man or woman ... safe? How are we going to keep the kids safe?” said Bart, of NWCAVE. “Perpetrators, no matter who they may be, they are out to finish a job, and they’re going to do it one way or another.

But if we have tools in our toolkit that we can put into place in every county in this state in order to keep those safe that are innocent ... then we’ll be a step ahead of the game.”

Keddie, of Northwest Justice Project, said he believes the Washington Supreme Court will need to weigh in on the issue to bring clarity and consistency.

“All of Washington state should be a safe place for survivors of violence, and having the uncertainty between all of the different courts creates a situation of terrible risk to some survivors,” Keddie said.