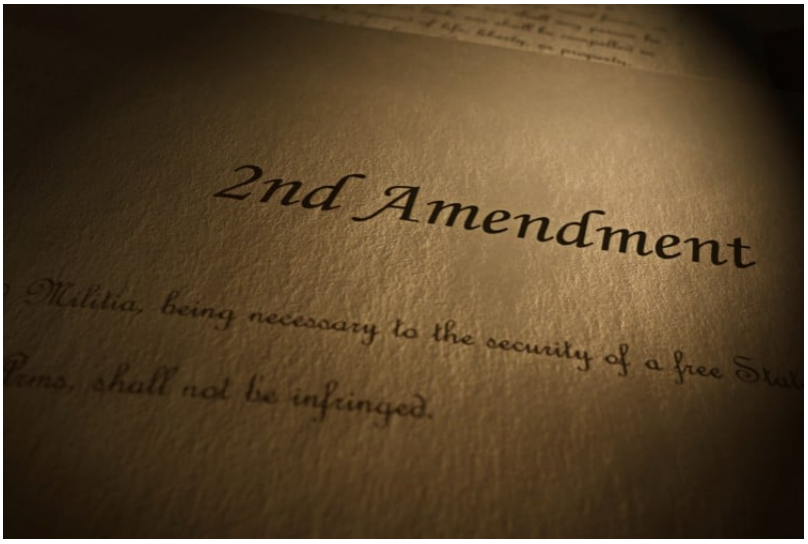
Written by **Bob Adelmann** on November 15, 2023

Another Win for the Second Amendment: Rights Cannot be Violated for Minor Offenses



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Thanks to the *Bruen* decision (*New York State Rifle & Pistol Association, Inc. v. Bruen*) from last summer, government must now show relevant historical analogs to back up efforts to disarm citizens. Two recent cases reinforce this point.

In the first case, Bryan Range understated his income in order to qualify for food stamps. He was convicted, pled guilty, paid almost $3,000 in restitution and fines, and underwent three years of probation. It could have been worse: He could have been jailed for up to five years.

That was nearly 30 years ago, and he thought he'd paid his dues for this minor transgression.

However, under federal law, "it shall be unlawful for any person [to possess a firearm for life] who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year."

So Range wasn't done paying for his misdeed. He has been denied his Second Amendment rights since then, and for the rest of his life.

He sued to get his rights back, and in June, in *Range v. Garland*, the Third Circuit Court of Appeals tossed the federal law. Amy Swearer, a senior legal fellow at the Meese Center at the Heritage Foundation, noted that the federal government had to demonstrate that its prohibition [thanks, once again to *Bruen*] "was consistent with the nation's historical tradition of firearms regulation. This it could not do."

Enter the case of Edward Williams. In April 2000, he was arrested for driving under the influence (DUI). He was arrested a second time for the same offense in 2001, and then again in 2004 and 2005. Despite this long and unhappy history of his battle with alcohol, he was never imprisoned. Instead he was placed under house arrest for 90 days, was ordered to pay costs and a fine of $1,500, and to complete a rehab program.

But, like Range, he was, under that same federal law, deprived of his rights under the Second Amendment. Wrote Judge John Milton Younge in *Williams v. Garland*:

> The Third Circuit determined in *Range* that the Second Amendment does not only belong to "law-abiding citizens" but presumptively belongs to all people….
>
> Therefore, the Second Amendment applies to Plaintiff despite his criminal history.
>
> Additionally, the Second Amendment clearly covers Plaintiff's petition to possess a firearm contrary to the prohibitions of Section 922(g)(1) [the federal law in question] … (finding that Range's request to possess a rifle and shotgun to hunt and defend himself is clearly protected conduct).

> Therefore, Second Amendment protections apply to both the Plaintiff and his proposed conduct.

Younge, a Trump appointee, explained:

> Prohibiting Plaintiff's possession of a firearm due to his DUI conviction is a violation of his Second Amendment rights as it is inconsistent with the United States' tradition of firearms regulation.
>
> The Constitution "presumptively protects" individual conduct plainly covered by the text of the Second Amendment, which includes an individual's right to keep and bear arms for self-defense. Protected individuals presumptively include all Americans….
>
> The Supreme Court has held that an individual's conduct may fall outside of Second Amendment protection "[o]nly if a firearm regulation is consistent with this Nation's historical tradition."

But, wrote Younge, "the government has not met its burden in proving that the prohibition of Plaintiff's possession of a firearm due to his DUI conviction is consistent with historical firearms regulations."

Lest any reader conclude that the court has ruled that it's okay for drunks to possess a firearm, Judge Younge made his position clear:

> Although this Court remains quite concerned about the prospect of granting access to firearms to persons who have demonstrably abused alcohol, it is not convinced that the general dangerousness of drunk driving and of combining firearm use and alcohol consumption establishes that DUIs must therefore be considered sufficiently analogous to historical examples of "dangerous" conduct that have previously served as grounds for disarmament.

Attorneys for AG Merrick Garland tried to show that there was sufficient "historical analog" to allow the ruling against Williams to stand. But the problem, as Judge Younge pointed out, was that those cases only restricted possession while they were inebriated, and not for life: "The historical firearms regulations provided by the government are not sufficiently analogous to the case considered here to satisfy its burden."

He concluded:

> For all these reasons, the Court finds that the Government has not carried its burden in proving that the United States' tradition of firearm regulation supports stripping an individual of their right to possess a firearm because they had previously driven while intoxicated.
>
> The application of Section 922(g)(1) to Plaintiff, therefore, constitutes a violation of his Second Amendment rights, and the Court finds that Plaintiff is entitled to the requested relief.

Swearer points out that these two cases, one building upon the other, are "the most significant Second

Amendment victor[ies] since [*Bruen*],” not only for Williams and Range, but for all those being targeted by the government under the federal rule that demands lifetime banishment of rights under the Second Amendment for minor infringements and misdemeanor offenses.