

IN THE 22-7460

**SUPREME COURT OF THE UNITED STATES**

**ORIGINAL**

CARLOS DARNELL DIXON,  
*Petitioner*,

V.

STATE OF TENNESSEE

*Respondent*,

FILED  
MAY 11 2023

OFFICE OF THE CLERK  
SUPREME COURT, U.S.

**ON PETITION FOR WRIT OF CERTIORARI TO  
THE SUPREME COURT OF TENNESSEE**

**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED**

**The issue presented in this application has never been addressed by this Court; to wit, to what extent may the State violate a citizen's right to bear arms as secured by the Second Amendment to the United States Constitution against him/her in a trial for an offense that involved the lawful possession of a firearm.**

**The State's cross examination of the Defendant regarding his possession of a firearm before and at the time of the shooting violated his Second Amendment right to bear arms and due process by allowing the jury to make a negative inference regarding this conduct.**

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## **Appendix**

- A. Opinion of the Tennessee Court of Criminal Appeals
- B. Order of Supreme Court of Tennessee Denial of Appeal

## **LIST OF PARTIES TO THE PROCEEDING**

**State of Tennessee (as represented by the State of Tennessee  
Attorney General)**

**Carlos Darnell Dixon, *pro se*, currently serving a sentence of 30 years  
in the Tennessee Department of Correction (TDOC).**

**Carlos Darnell Dixon is not a subsidiary or affiliate of a publicly owned  
corporation. There is no publicly owned corporation, not a party to  
the appeal that has an interest in the outcome of this case.**

## TABLE OF AUTHORITIES

### CASES:

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Attached hereto as Appendix A is the opinion of the Tennessee Court of Criminal Appeals denying relief and affirming the judgment of the trial court.

Attached hereto as Appendix B is the order of the Tennessee Supreme Court denying permission to appeal.

## **JURISDICTION**

28 U.S.C. §1257(a) provides:

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

**The Supreme Court of Tennessee denied the Defendant's Application for Permission to Appeal on February 8, 2023.**

## **STATEMENT OF THE CASE**

Judgment was filed in the Tennessee Court of Criminal Appeals on October 6, 2022, affirming the judgment of the Trial Court. The Defendant was convicted of one count of second degree murder and two counts of aggravated assault which was affirmed by the Court of Criminal Appeals. (See opinion attached). Defendant's sentence was twenty-five years (25) at 85% on the second degree murder conviction and five (5) years at 30% on each of the aggravated assault convictions, concurrent with each other but consecutive to the murder conviction for an effective sentence of 30 years. The Tennessee Supreme Court denied the Defendant's Application for Permission to Appeal pursuant to Tenn.R.App.P. 11 on February 8, 2023.

The facts of this case are set out in the opinion of the Court of Criminal Appeals, pages 1-22. Defendant submits that the following questioning by the Assistant District Attorney regarding his ownership and knowledge of weapons sought to create a negative inference regarding his association with firearms in violation of his U.S. Constitution Second Amendment right to bear arms:

The Court erred in allowing the State to question the Defendant at length regarding his possession of a weapon prior to the shooting in this matter and his conduct related to said weapon leading up to the shooting:

CROSS-EXAMINATION

18 BY GENERAL HUNTER:

19 Q. Mr. Dixon, can you tell us what your height and  
20 weight are?

21 A. As of right now, ma'am?

22 Q. How about back on May 10th and 11th of 2018?

23 A. About 6'1", about 190 pounds, 180 pounds.

24 Q. 180-190?

25 A. Yes, ma'am.

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1 Q. Okay. Okay. Mr. Dixon, is sounds like you are  
2 somebody who is very familiar with guns; is that right?

3 A. I mean, yeah, I buy guns. Yes, ma'am.

4 Q. Okay. Do you have a carry permit?

5 A. No, ma'am.

6 Q. Okay. Have you ever fired a gun?

7 A. At the gun range. Yes, ma'am, several times.

8 At On Target in Murfreesboro, Tennessee. I have a  
9 membership there.

10 Q. Okay. So you have fired a gun more than one  
11 time?

12 A. I mean, yes, ma'am.

13 Q. Okay. And what kind of gun? Do you have more

14 than one gun or just the .9mm?

15 A. That I, that I keep on me?

16 Q. Yeah.

17 A. I only carry one gun, but, yes, ma'am, at that

18 present time I owned two guns. I owned an AK-47 that

19 the police confiscated that was at my house that was in my

20 name and then the gun from that night that was in my name.

21 I had went to One Stop Money Shop because I was low on my

22 rent and the magazines that he found he asked me about it

23 was to a Glock. I had two Glocks. I pawned one at One

24 Stop Money Shop.

25 Q. I don't need to know all that.

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1 A. Okay.

2 Q. I'm just asking you about what you know about

3 guns.

4 A. Yes, ma'am.

5 Q. Okay. So the gun that you have and the gun

6 that you used to shoot and kill Cesar Reza was a .9mm,

7 correct?

8 A. Yes, ma'am.

9 Q. And it was a semi-automatic weapon, right?

10 A. I guess, yes, ma'am.

11 Q. Well, I mean, you know what it was.

12 A. I mean, like, like, it was a .9mm Ruger. I  
13 know guns, but the semi-automatic, automatics, no. I mean,  
14 I go in the gun store and I am one of those type of people  
15 that I might buy a gun because it looks the way it looks.

16 Q. Sure. But this is one that you have actually  
17 used, like you know that it takes a magazine that you have  
18 got to put in there, you know how to fire the gun, you know  
19 that once you fire the gun the shell casing pops out, you  
20 know all of that, right?

21 A. Yes, ma'am. Yes, ma'am.

22 Q. Okay. Okay. That is just what I am trying to  
23 get to.

24 A. Okay. Yes, ma'am. I'm sorry.

25 Q. Okay. Oh, that's okay. So that is not the  
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1 first time that you have ever fired that gun before is all  
2 I am trying to get at?

3 A. I haven't fired it many times, maybe two times  
4 prior to that.

5 Q. Okay.

6 A. And like I said they were both at On Target at  
7 the gun range.

8 Q. Okay. So it is a semi-automatic weapon, so it  
9 has got a safety on it, correct?

10 A. Yes, ma'am. If I, if I, do they have a safety?

11 I'm not sure. I don't -- I'm not sure, ma'am.

12 Q. Are you trying to tell me that your --

13 A. Naw, I'm --

14 Q. -- semi-automatic weapon did not have a safety?

15 A. -- I can tell you it was an LCP .9mm Ruger.

16 I'm not sure if it had a safety because like I said I've

17 never really fired it like that, but I can tell you what

18 type of gun it was and everything.

19 Q. Okay. Well, hold on. Hold on. You never

20 really fired it like what?

21 A. Like multiple times.

22 Q. Okay.

23 A. I fired it two times.

24 Q. Okay.

25 A. Yes, ma'am.

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1 Q. So you fired it?

2 A. Yes, ma'am.

3 Q. Okay. So in order to fire a gun you have got

4 to get it to work, right?

5 A. Yes, ma'am.

6 Q. Okay. So, I mean, this is just really easy.

7 It has a safety?

8 A. Okay. Well, yes, ma'am.

9 Q. Right?

10 A. Yes, ma'am.

11 Q. Okay. So in order to get the gun to fire you

12 have to take it off of safety, correct?

13 A. I mean, yes, ma'am, if it was on safety.

14 Q. Okay. And in order to get a gun to work you

15 have to put the bullets in it, correct?

16 A. Yes, ma'am.

17 Q. Okay. And in order to get the bullet in it you

18 have got to load it one by one into a magazine, correct?

19 A. Yes, ma'am.

20 Q. Okay.

21 A. But my gun was already loaded.

22 Q. Okay. But who loaded it?

23 A. I did.

24 Q. Sure. Okay. So when you decided to, it was a

25 choice that you made to load that weapon, correct? Did you

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1 decide to load the weapon or did the bullets magically get

2 into the magazine?

3 A. I mean, I guess I loaded the weapon.

4 Q. Okay. You loaded the weapon?

5 A. Yes, ma'am.

6 Q. So you made, Carlos Dixon, one day whenever it  
7 was maybe it was the 10th, maybe it was a day sometime  
8 before that, but Carlos Dixon decided I have this gun I  
9 would like to load it, right?

10 A. Yes, ma'am. I want to say it was loaded from  
11 the last time that I went to the gun range, because I only  
12 shoot my firearm at the gun range.

13 Q. Okay. And the person who loaded that gun was  
14 you?

15 A. Yes, ma'am.

16 Q. Okay. And the way that you did that, this is  
17 really easy, this is just what I am trying to get to --

18 A. Yes, ma'am.

19 Q. -- the way that you do that is you have to put  
20 one bullet at a time into the magazine to get the magazine  
21 loaded, right?

22 A. Yes, ma'am.

23 Q. Okay. And then after you get the magazine  
24 loaded then you have got to put it up into the gun,  
25 correct?

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1 A. Yes, ma'am.

2 Q. Okay. And then what other step do you have to  
3 take to get that gun to fire?

4 A. I'm confused with your question.

5 Q. Okay.

6 A. I'm like, what do you mean?

7 Q. Do you have to pull back the slide on the top

8 of the gun in order to get the gun to fire?

9 A. Yes, ma'am. If your gun isn't loaded, yes,

10 ma'am.

11 Q. Okay. But you said that your gun was loaded?

12 A. Exactly, it was, so during that night I didn't

13 pull back it was already loaded in my thing.

14 Q. Okay. So you walk around with your gun loaded

15 and not on safety?

16 A. Uh, I mean, I can't sit up here and say it, it

17 wasn't, it definitely wasn't on safety.

18 Q. Well, you were really sure about everything

19 else that you said and something as --

20 A. No, I'm, that's why I am telling it definitely

21 wasn't on safety that night because like I said I keep my

22 gun for protection. I never leave my car with it so if a

23 situation was to happen and say somebody came to me and

24 robbed me, by the time I take my key unlock the thing, take

25 the gun, flip the safety, put a clip in I'm robbed and I'm

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1 dead, so I would presume that my gun wasn't on safety and

2 it was in my middle console.

3 Q. Okay.

4 A. Yes, ma'am.

5 Q. All right. That's all I am asking you. Okay.

6 And you said that ever single time that you get into your  
7 car or every single time you get out of your car you make  
8 sure you take off your gun and you put it into your console  
9 and then you lock the console, correct?

10 A. Yes, ma'am.

11 Q. Okay. So on this particular night in order for  
12 you to have gotten the gun onto your side --

13 A. Yes, ma'am.

14 Q. -- you would have had to have gotten into the  
15 car, right?

16 A. Yes, ma'am.

17 Q. Okay. You had to choose to get out your key,  
18 right?

19 A. Yes, ma'am.

20 Q. Okay. And then you had to get the key into the  
21 console and turn it, right?

22 A. Yes, ma'am.

23 Q. You had to open up the console?

24 A. Yes, ma'am.

25 Q. All right. You had to get the gun out and you

1 had to put the gun in your waistband? Is that where you  
2 said you had it?

3 A. Yes, ma'am. And all of that occurred before I  
4 crunked my car up, before I hit reverse.

5 Q. Yeah. Yeah. Yeah. And all of those are  
6 choices that you made that night, right?

7 A. I mean, just a routine.

8 Q. Okay. All right. So you know what happens  
9 when you pull the trigger on a gun, right?

10 A. Yes, ma'am.

11 Q. Okay. When you pull the trigger on a gun a  
12 bullet comes out, right?

13 A. Yes, ma'am.

14 Q. Okay. And the bullet is going to hit whatever  
15 you are pointing it at, correct?

16 A. Yes, ma'am.

17 Q. All right. So you know what bullets can do,  
18 correct?

19 A. Yes, ma'am.

20 Q. Okay. So when a bullet strikes something it's  
21 going to, something bad is going to happen to whatever it  
22 strikes, if it is hitting a target the target is going to  
23 get a hole in it, right?

24 A. Yes, ma'am.

25 Q. If the bullet strikes a person, the person is

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1 going to get a hole in it, correct?

2 A. Yes, ma'am.

3 Q. So you know in your mind, you know this, Carlos

4 Dixon knows in his mind if I get a gun and point it at a

5 human being, right --

6 A. Yes, ma'am.

7 Q. -- and I pull the trigger, make that choice to

8 pull a trigger, after I have pointed the gun at a human

9 being, right?

10 A. Yes, ma'am.

11 Q. You know that when that bullet leaves and it

12 strikes said human being that it could kill them, correct?

13 A. I mean, in --

14 Q. Yes?

15 A. -- reference --

16 Q. No.

17 A. -- what are you --

18 Q. My question is: Do you know that when you take

19 a gun that you have loaded with the safety off pointed a

20 human, pull the trigger and a bullet comes out, and it

21 strikes the human that it could kill the human, right?

22 A. Possibly. Possibly, yes, ma'am.

23 Q. Okay. You know that it could kill the human,  
24 right?

25 A. Possibly, yes, ma'am.

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1 Q. Okay. Okay. It is, you know that it is  
2 possible that when you make the choice to fire a gun at a  
3 living human being that it could kill them?

4 A. I --

5 Q. That's your word "possibly"?

6 A. -- no, ma'am. I didn't make a choice. I  
7 feared for my life. I thought somebody else was picking up  
8 a gun which they said that they had over 8 to 10 times and  
9 was aiming one, was fixing to aim one back at me.

10 Q. Sir, I am asking you a question in general.

11 A. I mean.

12 Q. I'm asking --

13 A. I mean.

14 Q. -- you a general question, sir. You know that  
15 if you pick a gun up and choose to point it at a person and  
16 fire, and pull a trigger, cause a bullet to come out and  
17 strike a human being that it could possibly kill another  
18 human being, yes or no?

19 A. Yes, ma'am. Transcript, pages 507-516.

## **REASON FOR GRANTING THE WRIT**

**REVIEW IS WARRANTED DUE TO THE CONTINUED  
CONFLICT IN LOWER COURTS REGARDING WHETHER THE  
SECOND AMENDMENT TO THE U.S. CONSTITUTION  
PROHIBITS THE QUESTIONING OF A CRIMINAL DEFENDANT  
RELATED TO HIS LAWFUL POSSESSION OF A FIREARM  
EVEN IN A CASE WHERE THE USE OF SAID FIREARM  
CAUSED INJURY.**

Defendant was in lawful possession of said weapon. Defendant has a U.S. Constitution Second Amendment right to possess a weapon and use said weapon for self-defense. *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008); When the Prosecutor questioned the Defendant regarding all aspects of his possession and ownership of said weapon prior to the shooting, she was, in effect, arguing to the jury that they should take a negative inference from his possession of said weapon. Such an argument is no different than a prosecutor who questions a Defendant's choice not to testify at trial or to remain silent during police interrogation. See also: *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S.Ct. 2111 (2022).

Thousands of reported cases ignore the Second Amendment rights of a citizen who was in lawful possession of a firearm when he/she

became involved in a tragic situation that resulted in the use of said firearm.

In *Washington v. Rupe*, 683 P.2d 571 (Wash. 1984), the Washington Supreme Court discussed the basic principle that the State may not use the Defendant's exercise of a fundamental constitutional right against him to justify the imposition of the death penalty:

Our analysis starts with the well established rule that constitutionally protected behavior cannot be the basis of criminal punishment. See *Hess v. Indiana*, 414 U.S. 105, 107, 38 L.Ed.2d 303, 94 S.Ct. 326 (1973) (constitutional guaranties of freedom of speech forbid states to punish use of words or language not within narrowly limited classes of speech); *Stanley v. Georgia*, 394 U.S. 557, 22 L.Ed.2d 542, 89 S.Ct. 1243 (1969) (State may not punish mere possession of obscene material in privacy of home).

To protect the integrity of constitutional rights, the courts have developed two related propositions. The State can take no action which will unnecessarily "chill" or penalize the assertion of a constitutional right and the State may not draw adverse inferences from the exercise of a constitutional right. *United States v. Jackson*, 390 U.S. 570, 581, 20 L.Ed.2d 138, 88 S.Ct. 1209 (1968) (capital punishment provision of Federal Kidnapping Act unconstitutionally chilled Fifth Amendment right not to plead guilty and Sixth Amendment right to demand jury trial); *State v. Frampton*, 95 Wn.2d 469, 627 P.2d 922 (1981) (previous Washington death penalty statute needlessly chilled defendant's right to plead not guilty and demand a jury trial); *Griffin v. California*, 380 U.S. 609, 614, 14 L.Ed.2d 106, 85 S.Ct. 1229 (1965) (drawing adverse inference from defendant's failure to testify unconstitutionally infringed on defendant's Fifth Amendment rights). See also *State v. Mace*, 97 Wn.2d 840, 650 P.2d 217 (1982) (defendant's post-arrest silence cannot be viewed as evidence of guilt).

The proposition that adverse inferences may not be drawn from constitutionally protected behavior was recently reaffirmed and applied, as a distinguishing factor, to death penalty proceedings. See *Zant v. Stephens*, *supra*.

In Zant, the defendant argued that the fact finder's improper reliance on an invalid statutory aggravating factor required that his sentence be reversed. The Court rejected the argument, finding that

[i]n this case, the jury's finding that respondent was a person who has a "substantial history of serious assaultive criminal convictions" did not provide a sufficient basis for imposing the death sentence. But it raised none of the concerns underlying the holdings in [ Stromberg v. California, 283 U.S. 359 (1931), Thomas v. Collins, 323 U.S. 516 (1945), and Street v. New York, 394 U.S. 576 (1969)], for it did not treat constitutionally protected conduct as an aggravating circumstance.

(Italics ours.) Zant, 103 S.Ct. at 2746.

The Court went on to observe that the aggravating circumstances did not authorize the jury to draw adverse inferences from conduct that is constitutionally protected. After giving several examples, such as the expression of unpopular political views or the request for trial by jury, the Court concluded:

If the aggravating circumstance at issue in this case had been invalid for reasons such as these, due process of law would require that the jury's decision to impose death be set aside. (Italics ours.) Zant, 103 S.Ct. at 2747. See also *Barclay v. Florida*, \_\_\_ U.S. \_\_\_, 77 L.Ed.2d 1134, 103 S.Ct. 3418 (1983).

The above language clearly restricts the admissibility of evidence relating to constitutionally protected behavior. Because the Court characterized the impermissible use of constitutionally protected behavior as a violation of due process, if the evidence in question allowed the jury to draw adverse inferences from a constitutional right, reversal of defendant's death sentence is required.

Here, the challenged evidence directly implicates defendant's right to bear arms. Const. art. 1, § 24 provides:

The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men. This constitutional provision is facially broader than the Second Amendment, which restricts its reference to "a well regulated militia."

Recent cases suggest that the federal right to bear arms may be more limited than our own provisions. See *Quilici v. Morton Grove*, 695 F.2d 261, 270 (7th Cir. 1982), cert. denied, 104 S.Ct. 194 (1983).

Although we do not decide the parameters of this right, here, defendant's behavior — possession of legal weapons — falls squarely within the confines of the right guaranteed by Const. art. 1, § 24. Defendant was thus entitled under our constitution to possess weapons, without incurring the risk that the State would subsequently use the mere fact of possession against him in a criminal trial unrelated to their use. Our conclusion follows from the clear language of Washington's constitution. In addition, it coincides with the interpretation placed on a similar provision contained in the Oregon constitution. Oregon Const. art. 1, § 27 states:

Notwithstanding the seemingly absolute language of the constitutional provision, this court has held that the right to bear arms "is subject to reasonable regulation by the state under its police power." *State v. Krantz*, 24 Wn.2d 350, 353, 164 P.2d 453 (1945). Krantz upheld a statute forbidding persons convicted of crimes of violence to possess pistols. Other states whose constitutions provide for a right to bear arms in similarly unlimited language have also held such a right subject to reasonable exercise of the police power. *Hyde v. Birmingham*, 392 So.2d 1226 (Ala.Crim.App. 1980); *People v. Blue*, 190 Colo. 95, 544 P.2d 385 (1975); *People v. McFadden*, 31 Mich. App. 512, 188 N.W.2d 141 (1971). For the reasons above, we need not decide the parameters of this right.

The people shall have the right to bear arms for the defence (sic) of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.] In *State v. Kessler*, 289 Or. 359, 614 P.2d 94 (1980), the Oregon Supreme Court held that this language protects the right of an individual to possess weapons. This ruling was reaffirmed in *State v. Blocker*, 291 Or. 255, 630 P.2d 824 (1981). In Blocker, the court noted that their constitution also protects the citizen's right to possess weapons outside the home. See also Comment, *The Impact of State Constitutional Right To Bear Arms Provisions of State Gun Control Legislation*, 38 U. Chi. L. Rev. 185 (1970).

Here, in arguing that defendant's exercise of that constitutional right meant that he deserved the death penalty, the State attempted to draw adverse inferences from defendant's mere

possession of these weapons. Our constitution, and the due process analysis contained in Zant, prohibits use of this evidence.

Defendant's sentence of death must therefore be reversed.  
*State v. Rupe*, 101 Wn.2d 664, 704-708.

After the decision of the U.S. Supreme Court in *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008), it must be conceded that a citizen's Second Amendment right to bear arms is a fundamental constitutional right.

The dissenting opinion in *State v. Jones*, 2021 Ohio 3311, 13 (Ohio 2021) points out the quandary facing Courts in how to instruct juries in cases where the lawful possession of a weapon is used to infer an unlawful intent:

Finally, how does the lead opinion square the inference of intent to use a firearm with the right to bear arms? See Ohio Constitution, Article I, Section 4; Second Amendment to the U.S. Constitution. Does merely carrying a gun—an act that is protected by both the state and federal Constitutions—allow a jury to infer the intention to use a firearm? This inference alone is problematic. According to the Ohio attorney general, in 2020, county sheriffs in Ohio issued 169, 232 concealed carry licenses. [https://www.ohioattorneygeneral.gov/Files/Reports/Concealed-Carry-Annual-Reports-\(PDF\)/2020-CCW-Annual-Report](https://www.ohioattorneygeneral.gov/Files/Reports/Concealed-Carry-Annual-Reports-(PDF)/2020-CCW-Annual-Report) (accessed Sept. 1, 2021) [<https://perma.cc/7FEJ-K2S8>]. Does this mean that all those Ohioans who just last year received licenses to carry a firearm intend to use their firearm every time they lawfully carry a concealed weapon?

*State v. Jones*, 2021 Ohio 3311, 13 (Ohio 2021).

See also: *State v. Foster*, 493 P.3d 283 (Kan.Ct.App. 2021) and *State v. King*, 2011 Ohio 3417 (Ohio Ct.App. 2011).

In the recent case of *Columbia House & Redevelopment v. Braden*,

M2021-00329-COA-R3-CV (attached), the Tennessee Court of Appeals

confirmed that the citizens's right to bear arms is fundamental:

The Second Amendment to the United States

Constitution protects "the right of the people to keep and bear Arms." U.S. Const. amend. II. In *D.C. v. Heller*, the United States Supreme Court established that the "central component" of the Second Amendment is the "the inherent right of self-defense." 554 U.S. 570, 628 (2008). Most recently, in *Bruen*, the United States Supreme Court noted that the Second Amendment protects the right of law-abiding citizens to carry and possess handguns both inside and outside the home for the purpose of self-defense. 142 S.Ct. at 2156. In making its determination the Court stated:

In keeping with Heller, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

*Id.* at 2126 (citing *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50, n. 10 (1961)).

In the case before us, the circuit court reasoned that by agreeing to the Community House Rules in the lease agreement, which prohibit possession of a firearm within the leased premises, "Mr. Braden voluntarily waived any rights he may have to possess a firearm on the premises." However, in reaching this conclusion the circuit court did not consider the unconstitutional conditions doctrine, which "prevent[s] the government from coercing people into giving" up constitutional rights. See *Koontz*, 570 U.S. at 604.

The unconstitutional conditions doctrine provides that a governmental entity "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests." *Perry v. Sindermann*, 408 U.S. 593, 597 (1972);

see *Dolan v. City of Tigard*, 512 U.S. 374, 385 (1994) (explaining that "the government may not require a person to give up a constitutional right . . . in exchange for a discretionary benefit"); *W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 657 (1981) ("[A] State may not impose unconstitutional conditions on the grant of a privilege." (emphasis omitted)).

The constitutionally protected interest or right at issue here arises under the Second Amendment to the United States Constitution, which protects "the right of the people to keep and bear Arms." U.S. Const. amend. II. Self-defense is the "central component of th[at] right." *Heller*, 554 U.S. at 599 (emphasis omitted). Thus, "law-abiding, responsible citizens" have the right "to use arms in defense of hearth and home." *Id.* at 635.

The Amendment codified a pre-existing right to keep and bear arms. See *D.C. v. Heller*, 554 U.S. 570, 592 (2008) ("[I]t has always been widely understood that the Second Amendment . . . codified a preexisting right.").

As previously discussed, because Columbia Housing is a governmental entity "acting as a landlord of property that it owns," see *Rucker*, 535 U.S. at 135, its actions must comply with the Constitution. See *Lugar*, 457 U.S. at 930 (explaining that the Constitution "protects individuals only from governmental . . . action"). Thus, unless an exception applies, requiring Mr. Braden to surrender the "central component" of his Second Amendment rights for the benefit of public housing is an unconstitutional condition. See also *Holt v. Richmond Redev. & Hous. Auth.*, 266 F.Supp. 397, 401 (E.D. Va. 1966) ("[A] tenant's continued occupancy in a public housing project cannot be conditioned upon the tenant's foregoing his Constitutional rights." (citing *Lawson v. Hous. Auth. of Milwaukee*, 70 N.W.2d 605 (Wis. 1955))). *Columbia House & Redevelopment v. Braden*, M2021-00329-COA-R3-CV, pages 4-5, (attached)

## CONCLUSION

Thus, for the reasons stated above, Petitioner respectfully requests  
this Court to grant the writ of certiorari.

Respectfully Submitted,

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## Certificate of Service

I declare UNDER PENALTY OF PERJURY that a copy of the  
foregoing has been mailed to Ms. Sophia S. Lee, Assistant Attorney  
General, P.O. Box 20207, Nashville, TN 37202 this the 2<sup>nd</sup> day of May,  
2023.

*Carlos*  
\_\_\_\_\_  
Carlos Darnell Dixon