

Monday, June 30, 2008

Heller's limited reach outside the home.

As I walked to the District of Columbia Superior Court last Thursday, I felt a huge air of glee from a fellow criminal defense lawyer walking the opposite way. "Justice is coming at 10:00 a.m.," he exulted. Later that morning, in the courthouse, another colleague who defends many clients in handgun cases happily told me that the Supreme Court that morning had affirmed the United States Court of Appeals ruling invalidating the District of Columbia's virtual blanket ban on the possession of an operable handgun in one's home. Longtime Underdog readers know I agree with the result in the Supreme Court. *District of Columbia v. Heller*, ___ U.S. __ (June 26, 2008). As to Heller's effect beyond handgun possession in one's home, I posted my following view on a local criminal defense lawyer's listserv: Several listserv members suggest that Heller invalidates D.C. Code § 22-4504 concerning possessing unregistered firearms and unregistered ammunition. I hope that would be the case. However, doesn't Heller only automatically invalidate prosecutions for possessing handguns in one's home, and give the most immediate ammunition to attack prosecutions for transporting handguns between the gun shop, the home, the repair shop, and the shooting range, when all such activities are for the purpose of having a safely and properly operated handgun in one's home? After all, Heller's majority opinion says "We affirm the judgment of the Court of Appeals" after the court's summation paragraph (three paragraphs from the end) proclaims: "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense. Assuming that Heller is not disqualified from the exercise of Second Amendment rights, the District must permit him to register his handgun and must issue him a license to carry it in the home." *D.C. v. Heller*, ___ U.S. __ (June 26, 2008) (emphasis added). Because the Supreme Court affirms the judgment of the Court of Appeals, here is what the Court of Appeals concluded: "For the foregoing reasons, the judgment of the district court is reversed and the case is remanded. Since there are no material questions of fact in dispute, the district court is ordered to grant summary judgment to Heller consistent with the prayer for relief contained in appellants' complaint." *Parker v. District of Columbia*, 478 F.3d 370, 401 (D.C. Cir. 2007), affirmed sub nom *District of Columbia v. Heller*, ___ U.S. __ (2008). What, then, did the original summary judgment motion seek? "Appellants, six residents of the District, challenge D.C. Code § 7-2502.02(a)(4), which generally bars the registration of handguns (with an exception for retired D.C. police officers); D.C. Code § 22-4504, which prohibits carrying a pistol without a license, insofar as that provision would prevent a registrant from moving a gun from one room to another within his or her home; and D.C. Code § 7-2507.02, requiring that all lawfully owned firearms be kept unloaded and disassembled or bound by a trigger lock or similar device." *Parker v. District of Columbia*, 478 F.3d at 373 (emphasis added). Consequently, although Heller provides language to support providing Second Amendment rights beyond the home, I think the case only automatically invalidates prosecutions for possessing handguns in one's home, and gives the most immediate ammunition to attack prosecutions for transporting handguns between the gun shop, the home, the repair shop, and the shooting range, when all such activities are for the purpose of having a safely and properly operated handgun in one's home. Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:30