Impact of Decisions, from Lower Courts to Highest Court

Interviews with Attorneys Blair Nelson and Don Hammond

Interviews by Gila Hayes

Court decisions gave us much to ponder this summer starting with worries over how badly the United States Supreme Court opinion issued in United States v. Rahimi (https://www.supremecourt.gov/opinions/23pdf/22-915_8o6b.pdf) eroded the progress gained in 2022 in NYSRPA v. Bruen (https://www.supremecourt.gov/opinions/21pdf/20-843_7j80.pdf). It particularly raised concerns about future interpretations of the limits the US Constitution places on government restrictions on possessing guns for self defense.

Then, on the last day of July, the Minnesota Supreme Court affirmed a court of appeals decision that found a duty to retreat in MN is required before brandishing weapons even if the person acting in self defense does not harm their assailants. While MN v Blevins (https://mn.gov/law-library-stat/archive/supct/2024/OPA220432-073124.pdf) arose from actions we cannot imagine a Network member doing, the resultant caselaw does affect what MN armed citizens may and may not do to stop a threat against them.

Although one applies nationally and the other to a single state, the bigger implications of both cases created a lot of concern amongst armed citizens. As a result, we had several very interesting conversations with Network affiliated attorneys about those decisions and related issues.

Attorney Blair Nelson demonstates brandishing while talking about the issues present in the recent Minnesota Supreme Court *Blevins* decision.

Minnesota Supreme Court Expands Retreat Requirement

An Interview with Blair Nelson

With the internet exploding over Minnesota Supreme Court's decision against Earley Romero Blevins, I really appreciated the time Northern MN attorney Blair Nelson took in August to discuss that ruling using clear language and help explain what looked to me, as a layperson, like a substantial expansion in Minnesota's duty to retreat before one may act in self defense. So much concern has been expressed by Network members that we share our visit with Nelson in our Q & A format below, as well as a less formal video version at https://www.youtube.com/watch?v=sXdzjfKOAK4.

eJournal: Thank you for agreeing to help us understand what just happened at the Minnesota Supreme Court, Blair. Let's start by getting to know you and your law practice. You've been a Network-affiliated attorney since 2012, and unless I'm mistaken, you're licensed to practice in both MN and North Dakota. Tell us about your work, please.

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Bad Facts Make Bad Law

Rahimi, Bruen and CA Carry Permit Denials

An Interview with Don Hammond

In late July, we had a great visit with Don Hammond, a Los Angeles County attorney whom we met several years ago through our affiliated instructor Edmond Tan. The previous month, Don had won an appeal for a client who was denied a concealed carry license. The timing was interesting because his case echoed a supreme court case that was in the news. Don agreed to tell us about the L.A. County case and share his thoughts on bigger issues. For a less formal version, enjoy video of our visit at https://www.youtube.com/watch?v=sEFDfBqYYLw .

eJournal: Thank you for speaking with us, Don. Please tell us about yourself.

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Nelson: I've been licensed since 1996. My practice has always involved criminal defense work -– exclusively criminal defense and gun law since about 2014. I've been certified by the Minnesota Bar Association as a certified specialist in the area of criminal law. I was part of the team in the *Worth v. Jacobson* case, that is still ongoing to establish the right to carry for young adults in MN that are under 21.

eJournal: I'm afraid your good results in *Worth* may have been eclipsed in the deafening outcry over the *Blevins* ruling. We're hearing terms like duty to retreat, brandishing, and references to other states' stand your ground laws so much that frankly, it is hard to grasp what the ruling really means for decent, law-abiding people. Despite the court repeatedly stressing that it was a narrow ruling, *Blevins* has a lot of people extremely worried. Can you synopsize what the state supreme court said Minnesotans may or may not do to stop an evolving threat before they can use force to stop life-threatening injuries?

Nelson: At beginning of the **Blevins** decision, they did say that this is a narrow decision. It's a case of first impression in MN that establishes a duty to retreat in cases where people have committed the offense of second-degree assault, infliction of fear with a dangerous weapon. On the surface, it does not apply to any other offense in MN, but it definitely does change the landscape of how people need to think about acting in self-defense cases.

eJournal: How did MN end up with a duty to retreat without legislation having been passed to that effect? How has that duty been imposed historically? I've been wondering because as you said when you and I were talking earlier, it's unlikely that a member would ever do what as Blevins did. What's the history behind this decision?

Nelson: The duty to retreat has always been there in MN in cases of use of deadly force. I crawled around on Westlaw and found cases back to 1865 that included a duty to retreat before using deadly force. It has always been required before you harm somebody else. This just extended it to the threat of harm and the imminent threat of bodily harm using a dangerous weapon.

People may not have been privy to all the facts in the Blevins case. Those facts matter. Mr. Blevins was charged with three counts of assault with a dangerous weapon. He had the world's worst lawyer – himself – and had standby counsel. He made what I would always call a mistake: waiving a jury trial and having the case heard by the court sitting in place of a jury.

Despite that, he was actually acquitted of one count of second-degree assault with a dangerous weapon and convicted of two others. The facts of the case: he was invited to step outside of the range of cameras by someone that had a knife that threatened to slash his throat if he came and joined them on the platform. Rather than leaving the situation, he drew a machete and spent almost a minute chasing people around the train platform.

This goes beyond the classic Paul Hogan, *Crocodile Dundee,* "That's not a knife. This is a knife!" and went full on Danny Trejo *Machete.*

eJournal: Well, like you said, most of us wouldn't do the same thing, but I think that we do see ourselves in the beginning, earliest phases of an incident where somebody says, "Come over here and I'll slit your throat," and they are brandishing a knife. The lawful response is the part in which we're interested.

I wonder what the legal fallout from the Blevins decision will be, especially for a person who is violently attacked under fast-changing circumstances. An attacker can cover distance pretty darn quickly! While I expect there's irony in use, some people have said that now if you draw a gun, you better shoot it to avoid being charged for failing to retreat. Is de-escalation off the table now?

Nelson: First of all, the people saying that are crazy. Use of a firearm is deadly force. There is and always has been a duty to retreat. Don't read more into this than the law says.

Any use of force needs to be reasonable – that's just an absolute cornerstone.

The concerned public here is asking the wrong question. In self-defense cases, the question is not, "What can I do?" The question is, "What must I do?" That is the ultimate question that keeps you on safe ground.

What you must do is the reasonable thing. People need to keep that in mind. The essence of self defense is defense of self. It is not an invitation to become an aggressor, which Blevins did in this case.

Blevins has a history that includes three armed robbery convictions. Blevins has been convicted of felon in possession of a firearm. Maybe that's why he was running around with a machete in his pants, right?

Anything you do has to be reasonable. In fact, if you are armed with a firearm and somebody is threatening you with an impact weapon, it is reasonable and tactically prudent to create space, if at all possible. You need to stay out of their reach if you are going to avoid harm. You have more reach than they do.

Retreat is always the preferred option.

eJournal: I read, possibly in the decision from the Minnesota Court of Appeals that someone had come up behind Blevins whom he fended off, and I believe that use of force led to the charge that he got acquitted on, that was considered self defense. There was, as you said, quite a bit going on that train platform at that point. And then you take that – a real furball of a set of circumstances – and out of these facts, we're getting case law! Even for those living outside MN, as I do, there is

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concern ultimately about our own state's laws as well as what our state's case law requires, if one of us needs to defend ourselves.

Nelson: Don't get in the weeds with this furball of an incident. It's not going to apply to your furball. Every furball is different and it is an exercise in futility to try in your head to prepare for imaginary bugbears. There's no sense to it. The important part that needs to be included in the training of the armed citizen, and what the armed citizen needs to bring to mind, is that retreat is always the most reasonable option.

Now, as far as attorneys defending these cases, I can see that we are going to end up litigating the applicability of self defense a lot more. That is probably going to require the bar to present evidence of reasonableness far more often than they have in the past in cases involving display of a firearm or defensive language.

Think back to our good friend now deceased, Jim Fleming and his book *Aftermath,* which was my first exposure to the psychology and the psycho-mechanics of a self-defense situation. His reference to Dr. Alexis Artwohl's work covers things that the defense bar needs to bring up to show the reasonableness of the situation based upon how the human mind responds to threats.

eJournal: Some have wondered if we were going to face duties to retreat more broadly, not only in MN, but if this were to spread into other states. Some have opined that if our alternative becomes verbal warnings, even while backing away, our warning might become, "Don't come any closer. I have a gun." I am concerned that tactic just swaps one crime for another. Are we exposing ourselves to charges of making terroristic threats if we emphatically say, "Don't come any closer. I have a gun!" What are your thoughts about verbal warnings?

Nelson: As a practical matter, it makes a lot more sense to say, "Stop," rather than, "Stop, I have a gun."

The act of saying, "Stop! I don't want this fight" is how you show your peaceable nature and that any eventual use of force is reasonable. That has been the history of self defense. You need to be, as Massad Ayoob says, on the side of the angels. As a matter of common sense, that is the attitude that the armed citizen has to take.

Offenses vary state to state, and everything has to be done within the parameters of the law of the jurisdiction. Where you have different laws, and different rules, in different places, people need to know the rules for where they are.

eJournal: It's easy apply the term "brandishing" to Blevins' actions, swinging a machete around at three people for 58 seconds. For self defense, I very much prefer the term "defensive display" if we're showing a deadly weapon to stop aggression at gunpoint. In the various states would you call what Blevins did, defensive display of a deadly weapon, or brandishing? Your thoughts on terminology? Is one good, is one bad?

Nelson: Terminology matters, depending on the jurisdiction. Minnesota has no definition of brandishing in the law. The offense that Blevins was convicted of – second degree assault with a dangerous weapon – is very simply defined in MN with certain elements. First of all, an assault is an act. There has to be an act involved, with the intent, to cause fear of immediate bodily harm or death.

I would suggest, although this is not necessarily the way a court will see it, that an assault requires pointing a firearm at another. Because a gun carried at low ready, for example, is not a position to intentionally scare someone that the threat is immediate, it is a preparation rather than a declaration, so to speak. In fact, MN has laws that say it is a misdemeanor to point a firearm at someone else, whether loaded or unloaded.

Then you have the elemental jump to pointing with the intent to make them afraid of immediate bodily harm or death, so it gets very fuzzy and escalates very quickly.

I would say in self-defense cases, words matter. Demeanor matters. Now, aggressive language about guns or "I'm a gonna…" is not a good approach. "I'm a gonna" get the hell out of there is a damn good approach.

eJournal: Good for you. Well, you're absolutely right: as the fallout from Blevins has evolved, people's suppositions that the sky was falling because of it have gotten wilder and wilder. It's been alarming to hear some apparently planning to make threats about having a gun and what they are gonna do with it. I appreciated the concept you cited from MN law, about the action, so I'm wondering now, are our actions analyzed as different than our verbalization?

Nelson: Yes, an act requires an act. Threats of violence is a different crime than assault in the second degree in MN. It used to be called terroristic threats. It's a somewhat lesser felony, but still a crime of violence, and a bad idea. Don't do it.

As the law gets applied, these minor differences matter a great deal. Don't, as a citizen, worry about the minor differences or try to plot that out. If it's a furball, you just need to be as reasonable as possible and as peaceable as possible to stay out of trouble.

eJournal: I think we can conclude that Mr. Blevins was neither peaceable, and the court would say, probably not reasonable, but you're absolutely right about demeanor. Let's talk about the courts a little bit. Blevins lost a court of appeals plea and now the Minnesota Supreme Court has ruled against him. If you had a better set of facts, would it normally be this difficult to get bad rulings changed through the appellate process?

Nelson: The appellate process is the last resort. Very few cases

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get overturned on appeal. You don't want to be at the mercy of the appellate courts because oftentimes you're sitting in prison while they're working it out. Years ago, I had a gentleman who was convicted of assault with a knife who had tried to claim self defense at trial. The judge gave a bad instruction that he had a duty to retreat in his own home, which MN does not require. By the time the Court of Appeals overturned that, he had been released from prison. Likely you're going to sit in custody while the appeals are going on, particularly in a serious felony. You can't undo that.

eJournal: Is there any further recourse for Mr. Blevins? Dave Kopel was quoted as saying that the United States Supreme Court generally doesn't take cases that are specific to state-level self-defense laws. Do you think Blevins has got anywhere else to go with this?

Nelson: Blevins has no federal or constitutional questions that were raised at the lower courts. In a self-defense case like this, there are arguments that a Bruen theory could be raised as to the history of the duty to retreat. In this case, there would be a good Bruen argument as MN has just adopted a duty to retreat in cases of threats. However, there will be a bit of an appellate furball as to that duty to retreat, which has always existed, back into the early days of the country.

You have to raise the right issues, but Mr. Blevins' case is done for all intents and purposes. Of course, he doesn't care. He's a fugitive right now.

eJournal: I read that, too. As you and others have commented, bad cases make bad law. And his was not a good case.

Nelson: Well, realistically, as you said, nobody is going to spend a minute chasing people around a train platform with a machete. That's not our demographic. What is going to affect our demographic going forward is this additional duty to retreat placed on second-degree assaults, infliction of fear, with a dangerous weapon in MN.

eJournal: It puts so much more weight on the advice that you gave us to retreat when we can. It gives added importance to what you said that is almost life-style advice: Have a non-aggressive demeanor. All those things become even more critical when case law like this comes about. There has been a lot of mention about the stand your ground provisions that are currently in some states' laws. A certain number of states really don't have a duty to retreat. I wonder how many politicians and how many courts are looking at this saying, "Hey, we could knock that down a little bit?" Have you any thoughts on that?

Nelson: I'm not even going to try to guess.

eJournal: *[Laughing]* You're not going to polish your crystal ball for me and peer inside?

Nelson: I don't have one. Nobody does. However, what people should do, is to not be the next test case. Don't put yourself in a position where you can screw up this bad. It's not worth the aggravation.

eJournal: I'm just a lay person. Many times, when I do these kinds of interviews, I don't even know if I'm asking the right questions. You've been really gracious about redirecting some of my missteps and that's so much appreciated. Are there things that I should have asked that I failed to ask you?

Nelson: Well, there's a whole bunch of questions that people have, hot takes, reactions, and over-reactions. Let's talk about what this decision does not do.

It does not impose a duty to retreat in the home. No, it specifically applies to a case such as this of infliction of fear where there is a duty to retreat. MN has no duty to retreat in the home so long as the use of force itself and circumstances are reasonable. Okay, so that's one thing.

It does not necessarily apply to open carry. The very act of having an exposed firearm may bother certain people that are subject to being bothered by the sight of a gun, but at least for this offense, the person who is open carrying, absent other circumstances, is not doing so to inflict fear that he is going to immediately hurt somebody, so it should not apply to open carry. That's an area that people are concerned about. Open carry is not a good idea, but *Blevins* should not apply to that. All right?

It does apply to the concept of what you can and cannot say, and that is, as we've talked earlier, a demeanor issue. The armed citizens, at least online, the keyboard warriors and such, tend to make a lot of big, bold, brash statements, which, by the way, to those of you who are warring on the keyboard, can and will be used against you later. Don't do that. The ethos of the community needs to check itself and this is one benefit of and a good reminder to maintain a peaceable demeanor. Avoid conflict when you can, and it will be seen as far more reasonable.

eJournal: That packed a lot of learning into a short period of time. Is there anything else? Anything else that will set us on the right path?

Nelson: I make a practice of doing pro bono consultations for people that have MN permits to carry. I would rather take a phone call and discuss the mindset and the way to approach life than defend somebody later. There's plenty of work out there and I would rather people stay out of trouble, than have to hire me down the road.

eJournal: You're awesome, Blair, and we've had 12 wonderful years teamed up with you. Let's go forward to more, and for now, thank you for being there for us. Thank you for supporting our work. Let us know if there's anything we can do for you there in MN. We're proud to be teamed up with you.

Bad Cases Make Bad Laws, An Interview with Don Hammond – *continued from page 1*

Hammond: I'm a criminal defense attorney and founder of the law firm Criminal Defense Heroes, in Torrance, CA, which is in Los Angeles County. I've been shooting since I was about eight years old, when I first fired a shotgun. It knocked me on my butt. Now, I am a certified shooting instructor and teach classes with Edmund Tan at Shoot Safe Learning in Lomita.

California now requires a 16-hour class, so we do one day in the classroom and one at the range where I help teach the tactical stuff and the shooting qualifications. In the classroom, I talk about CA's gun laws, particularly as they apply to pistols and how people who are getting concealed carry licenses can stay out of trouble. I'd rather talk with people in advance about how to do it right, rather than have them in my office three or four months later because they did something they shouldn't have.

I have a pretty varied practice, both geographically as well as criminal defense-focused and firearms-based. I have cases open right now from San Diego to San Luis Obispo and out east to Indio. On Monday I flew to court in Santa Barbara. I travel a lot so it helps that I'm a pilot and a flight instructor.

eJournal: When you defend gun-related cases, are most related to regulatory gun law?

Hammond: I'm defending gun cases fairly frequently. This morning I was in court and two of my three clients are accused of possessing what CA calls assault weapons.

eJournal: How often do you defend a genuine self-defense case?

Hammond: Self-defense cases, where somebody used some level of force, come up three to five times a year. Most recently, a client had a CCW license and was carrying a gun but didn't go straight to the lethal option; he used pepper spray in self defense. I talked to the police and persuaded LAPD that he's a responsible citizen who chose to de-escalate the situation. They did not even file the case. Those things happen pretty frequently.

Sometimes when self defense comes up, it's imperfect self defense. What was going on isn't always black and white. Who threw the first punch? Was it self defense? Who was at fault? If it's not real clear, we have to make the argument.

I'm very familiar with litigating CA's castle doctrine and duty to retreat. I recently defended a Navy DOJ police officer from Florida who was in CA for medical treatment. He got into a road rage incident. The other guy got out of his car and was coming toward my guy. Allegedly, my guy pulled his off-duty weapon and pointed it at the guy, which has the tendency to defuse situations rather quickly. The other guy called the cops and said, "Hey, this guy just pointed a gun at me."

My guy was charged with assault with a firearm. That case is on track right now for dismissal through a mental health diversion and the case will ultimately be dismissed. Sometimes getting the sure dismissal is better than picking 12 jurors and trying to fight it head on. Case dismissed is case dismissed.

eJournal: Several months ago, you successfully appealed the denial of a concealed carry license in Los Angeles. Why was it denied and how did you solve the problem? Why was overturning that denial so very unusual?

Hammond: First, a little background: Senate Bill 2, some of which is on hold, is the CA legislature's response to *Bruen*. It was a major change to a lot of different aspects of CA firearms laws. Historically, it was nearly impossible to get a concealed carry license in CA's more populated counties like L.A. County. They just weren't issuing them. They had the good cause standard, but the most common reason had been a moral character denial. The chief of police or the sheriff in the county said, "We think you've got bad moral character, so we're not going to give you a license." It was very broad, very subjective.

Bruen shot that down and over the last two years or so they had to start issuing some licenses. SB 2, which took effect January 1 of this year, overhauled the entire system. The new law eliminated the moral character requirement and lists the reasons for presumptive denial.

The first part says, "unless a court makes a contrary determination pursuant to Penal Code Section 26206," you can presumptively deny a permit for certain convictions within the past five years, others within the last ten years, having a restraining order within the last five years, being irresponsible with firearms and getting them stolen – there's a whole laundry list. The most frequent reason now for denying a concealed carry license is what they call "reasonably likely to be a danger to self, others or the community at large," whatever that means. It's pretty broad.

Now, PC 26206 created an appeals process. If a police chief or sheriff denies someone a license, there's a right to appeal it to a court and get a ruling from a superior court judge. That is what we did in the case you asked about.

We had 30 days in which to file an appeal after a police chief denied my guy a license. This was the first appeal in L.A. County, so I went around to a bunch of different clerk's offices and asked, "How do I file this thing? Who wants it?" until I finally got

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to the right place. This judge is going to hear all these appeals [in L.A. County] and it is going to be the same DA on the other side, so we will develop some institutional knowledge.

My client was arrested in 2014 for domestic violence – just an arrest, no case was ever filed so obviously, no conviction. The arrest record has since been sealed. As part of that arrest, the police got a judge to issue an emergency protective order. That's common to domestic violence arrests. It prohibits contact for seven days to allow the victim to go to court and seek protection. In this case, the guy's wife never did that, so after seven days the restraining order dissolved, and he had no reason to think about it for the last 10 years.

On his CCW application he answered, "Yes, I was arrested 10 years ago by the same agency I am applying with. I am not hiding anything here," but he completely forgot the emergency order. That order was just one piece of paper in a big pile of paperwork that he was given as he was leaving the jail. There is another question on the CCW application that asks, "Have you ever been the subject of any kind of a restraining order?" With no reason to think about it since then, he answered, "No. I have never been subject to any restraining order."

The police department initially said, "We are denying you because you are subject to a restraining order." He said, "What are you talking about? I have never been subject to any restraining order." After a little back and forth by e-mail, the agency said, "Oh, it looks like you are right. Well, we are going to deny you because you failed to disclose this protective order on your application."

There is nothing in the law as it is currently framed, that says failure to disclose is reason for denial, but we're seeing this very frequently. Someone misunderstands the question on the application, or they forget that something happened, and these agencies issue denials for failure to disclose, which is not correct.

There is a criminal statute for knowingly failing to disclose something on an application, which the judge brought up at the hearing, but there is nothing in the law that allows them to deny a CCW license because of a failure to disclose. They couldn't prove that my client knowingly did that. There are also grounds in the statute for revoking a permit if they discover something later that they didn't know when they granted the permit, but that is not denial of the application, either.

I drafted a brief explaining this, and at the hearing, I talked about it and convinced the judge. It was the first such appeal a judge had ever heard in L.A. The district attorney or prosecutor has the burden of proof by a ponderance of the evidence to show that the person should be denied a permit, that they are a prohibited person under CA PC 26202. The judge found that the prosecutor failed to meet the burden of proof and ordered the local police department to please issue a license to my client. It was a big win.

This happened over two months ago. Back on July 2, the police said his permit should be available in a couple of days, he followed up a couple of times, and the police stopped responding to him. I wrote a nice demand letter to the city attorney saying, "Hey, tell your chief to get his act together." I was considering having to get the court to enforce the order to issue a license to my client. If I'd had to, and had won provision of a writ of mandate, I would have expected attorney's fees from the department. Fortunately, the city atorney prodded the police chief and my client now has his license.

eJournal: Are you becoming the expert everybody goes to for CA license denials?

Hammond: I hope to be that expert because I honestly don't know any other attorneys who are actually doing these hearings. The one I did and won was the first one a judge ever decided in L.A. County, so nobody else has that experience.

In all fairness, I did lose an appeal the following week for a guy with two separate domestic violence arrests but no convictions in his past. The police agency did a psych report as a part of their evaluation and said things in his background could indicate dangerousness. The judge was not willing to go against the psych report to overturn the denial. I encouraged my guy to appeal it up to the second district, but he didn't want to. He can reapply in two years.

I laid out some arguments for another guy prior to his hearing on a denial. He decided not to hire me to help him with the hearing and he lost. Now, he's hired me to file an appeal. I don't know what he said at the hearing, so can't predict how successful I'll be, but I'm working on getting the record.

A few weeks ago, I happened to be in court in Orange County on a restoration of rights. While I was in court, I saw a pro-per guy *[in propria persona]* in the very first CCW license appeal an Orange County judge was going to decide under 26206. Nobody knew what was going on! The judge said, "What is this? I'm gonna have to read this statute and figure this out. The prosecutor standing there, bumbling, said, "I don't know what we're supposed to do. It looks like I have the burden of proof." The poor appellant trying to get his CCW license was like, "Well, I don't know how to do this, either," and so as he was leaving the courtroom, I slipped him a card and he is now a client. I will be the attorney representing him on the very first of these appeals that will be decided in Orange County.

eJournal: How extensively did your successful L.A. County

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appeal use the principles the supreme court laid out in the *Bruen* decision? Has it made a big difference in CA?

Hammond: I think it has. It's background because we're within a statutory framework and the judge feels that they're confined to the statute in terms of what is admissible in these hearings. When I file a brief on one, I start with *Bruen* and *Heller*. The supreme court said that we have an individual right to carry firearms for personal protection; we don't have to justify it individually. We're talking about a fundamental right, and I give the history. I think a lot of the judges don't follow these cases because they're not gun people. There's a lot of language about this individual right in *US v Rahimi*. Any restriction on it, like in Rahimi's case, is going to be a temporary limited restriction after specific findings. It doesn't fly to deny a permit to somebody who has a clean history because they didn't reveal something or because you think everybody's reasonably likely to be dangerous if you let them carry guns. We're talking about fundamental, constitutional rights.

eJournal: Before moving on to *Rahimi,* one last question related to *Bruen* and SB 2 – How much has carrying a gun legally for self defense opened up and how much was countermanded through new restrictions like so-called sensitive places?

Hammond: It has done a lot of good. *Bruen* is why our sensitive places restriction in SB 2 is on hold right now. Chuck Michel, his law firm, and the California Rifle and Pistol Association are pulling the laboring oar on the lawsuits that are getting us these injunctions and they're doing a fantastic job at using Bruen to squash some of the more egregious parts of the new laws.

Senate Bill 2 was passed as the CA Legislature's response to Bruen. They basically said the entire state is a sensitive place, so even if you get a license, you can't carry anywhere. SB 2 tried to flip the rule on private businesses to only let you carry where there is a sign that says you can, otherwise, it's a sensitive place. That's all on hold. Right now, we're at status quo in terms of where people can carry with a valid license and for sure that's all Bruen-based.

They've had to loosen the standards for giving out licenses. The process for an expedited writ of mandate if a local agency denies somebody a carry license is a huge step in the right direction. We have 30 days to file the request for hearing and they have to give us a hearing within 60 days. That we get the hearing, and we get to go convince the judge to overturn the agency and say, "No, this isn't a good enough reason. Give them a license," shows that they're taking this seriously. In many ways, judges are more apt than cops to respect the law.

eJournal: When I read about your carry license appeal and denial based on the long past and brief restraining order, it echoed a case, *Rahimi*, that the supreme court recently decided, which if I understood it, challenged stripping gun rights from people who had domestic violence restraining orders.

How much did Rahimi water down Bruen's instructions on how to apply the Second Amendment? Justice Thomas wrote that it defeats the purpose of historical inquiry altogether. Did it?

Hammond: I wrote an article on *Rahimi* for a local newspaper. My title was, *Bad Facts Make Bad Law,* because this was a terrible set of facts to take up to the supreme court. I don't really begrudge them bending over backwards to find a way to keep guns out of this guy's hands. Everybody except Justice Thomas agrees that Mr. Rahimi should not have guns, but I think the way the supreme court got there is confusing and gives very poor guidance to lower courts. Since *Bruen*, all the circuit courts and the district courts are struggling to apply this standard. In *Bruen* itself, the court said surety laws aren't close enough historical analogs to deny gun rights. Then in Rahimi, they turn around and say, "Surety laws existed, and those are close enough. We'll use that as our historical analog." What's a lower court to do?

eJournal: What's a surety law?

Hammond: A surety law has you post a bond. If we thought you have a tendency toward violence, we'd ask you to post a bond so that if you hurt somebody with your gun, we could get them money. If people didn't post the bond, they weren't allowed to carry a gun. It was a way of disarming them.

It's key in *Rahimi,* though, that the court sided with that perspective because it would be a limited deprivation of rights. It's not a permanent thing. In cases related to concealed carry denial, I often ask, "What stops this from being a permanent deprivation?" If we lose the 26206 hearing in court, that triggers a two-year waiting period before they can apply again, but if it was a very general denial based on "reasonably likely to be a danger," how long is that true? If something happened 15 years ago making you reasonably likely to be a danger, at what point has it aged out?

There's a case from the parole context – I've done some life or parole hearings to bring people home who have been incarcerated for 20, 30, 40 years – called *In Re: Lawrence* that says the immutable factors of the commitment offense are no longer probative of present danger to society after a number of years and rehabilitative steps. We're looking at exactly the same thing in this context. After some number of years and other things a person has done in their life, you don't get to keep using something against them that happened a long time ago. I am about to brief that argument in one of my cases.

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I think *Rahimi* is very confusing as to what standard the lower courts are going to try to apply. Some of the confusion is because not enough justices would buy in on a better, stronger historical analog. Some justices in their concurrences outright said, if I could, I would overrule *Bruen*, but I can't, so I'm to take away Rahimi's rights. There's a lot of horse trading that goes on behind the scenes of the supreme court.

eJournal: Can't we take a better case up to the supreme court to clarify when it is OK for the government to deny people's rights?

Hammond: There are numerous cases working their way up across the country. A couple out of Chicago related to magazine capacity and assault rifles are probably going to make it to the supreme court. I think they're closer to making it to certiorari, which is the supreme court agreeing to hear a case, than some others. The Ninth Circuit right now has some CA cases on magazine capacity, the handgun roster, and assault weapons bans in various stages of briefing and argument. We're looking for decisions on those, and whichever side loses is almost certain to file a petition for writ of certiorari to the supreme court. Before that happens, we may very well get decisions in the Midwestern cases that may make ours moot.

eJournal: Are the magazine capacity cases better to stop the erosion of the historical analog?

Hammond: I think that they're going to have a very difficult time showing any kind of historical analog to a magazine capacity restriction. We have no problem getting a strong case which will reinforce the Second Amendment and the historical analog standard. I don't know what the Ninth Circuit's going to do; I don't know what the Second Circuit is doing; but I think the supreme court as currently composed, would give a strong Second Amendment ruling on a magazine capacity and an assault rifle ban that would really clarify what the standard is in terms of the historical analogs.

There's always a chance the supreme court could change before these cases get there, and then who knows? All bets are off and it's really tough to predict. I hope we can get there before they change too much. How much deference would a new court pay to established precedent? The current court doesn't pay a lot of deference because they're overturning things from the 1970s like Roe v Wade and they just overturned the Chevron deference doctrine related to regulatory implementations that's been in place for a very long time. They don't seem to have a lot of respect for established precedent. If we get some changes in the court, maybe they're not going to respect the established precedent, either. It's tough to know.

eJournal: Like *Roe v. Wade* returning the abortion issue to the states, isn't it better if the states handle problems like Rahimi? Texas had arrested and punished him several times, raising a devil's advocate question: Why can't we settle down and agree to be bound by our state's law?

Hammond: Rahimi was charged with a federal law that said that somebody who's subject to a domestic violence restraining order that meets certain criteria is a prohibited person. It's an interesting feature of our federalist system that we have this duality of laws, and a particular course of conduct can be prosecuted at the state level or at the federal level. We have a state penal code in CA that outlaws a whole bunch of conduct, then there are federal criminal laws that ban a lot of things, too.

We had a really interesting decision out of the Ninth Circuit a couple of months ago, *United States v. Duarte* that found that a reformed nonviolent felon who had been to prison and served his time, is not forever a prohibited person under federal law. Conventional wisdom was if you're ever convicted of a felony, your Second Amendment rights are gone. The Ninth Circuit said, "No, not necessarily. He's a nonviolent felon. If you embezzled from an employer 20 years ago and you've done your time, why should we take your guns away?" It's a good question and the Ninth Circuit seemed to say, "Well, maybe we shouldn't."

We got *Duarte* from a federal law saying no felon can have a gun under 18 U.S.C. § 922(g)(1); similar to what *Rahimi* challenged. The Ninth Circuit historically is no friend of the Second Amendment. We are seeing some cracks of light.

Federal laws have a faster path to get up to the federal courts of appeal, whereas, if I wanted to challenge a state law, say CA's ban on a nonviolent felon having a gun, first I'd have to argue that at the trial court level where I've argued and lost on Bruen motions several times. If the trial judge said, "No, we don't think this guy should have a gun," I'd have to go to a state appeals court and then the state supreme court and then consider where it goes from there, usually directly to the federal supreme court. You don't usually get a federal appellate review of a state court decision; getting cert granted is very unlikely.

eJournal: What is the best method for law-abiding citizens to claw back the freedoms that we've lost?

Hammond: I think the way to do it is to responsibly exercise our rights. Instead of going around flaunting and brandishing your guns, you should talk to your friends who are anti-gun and say, "Hey, you think I'm a responsible guy, right? Is there a reason that I shouldn't be allowed to carry a gun?" Of course, they'll say, "No, you can call the police," and you say, "How long does it take for the police to get there? If I'm getting mugged in an alley, are the police there to stop it?" When they say, "Well, no," you say, "God forbid I ever need to, but I need

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to be able to responsibly handle that myself. I'd like to have the ability to be prepared. Is there some reason that I shouldn't?"

It is largely a battle of public opinion. I have quite a few anti-gun friends and I have quite a few very liberal friends who are pro-gun. I have a varied social circle from my wife's very liberal family, who know I have guns and totally support and are fine with it, to my firearms instructor friends who are single issue Second Amendment voters. I'm a very middle of the road guy myself. I'm not beholden to either side politically. Obviously, I feel strongly about the Second Amendment, but I feel just as strongly about other things.

I think change starts with those conversations. On social media when people say we need more gun control, ask, what does that mean? What gun control would you actually like? Get more granular about it when there are terrible incidents. Ask, "Would any of the things you're proposing have stopped this from happening?" The vast majority of the time, the answer is, "No. The gun control you would like would not have stopped most incidents from happening." What is the rationale behind imposing restrictions on law-abiding gun owners, when it's not going to stop the criminals? Where's the sense in that?

I think that those are reasonable conversations to have. People don't understand each other's perspectives. You may not want to fly an airplane and think it's silly that I do, but why would you want to ban that? I use my airplane as a tool in my business all the time. Analogize it to other issues: I don't have any interest in knitting, but I don't think you should be prohibited from it.

People just don't understand that gun ownership is for sport, some people hunt for sustenance and the supreme court has now recognized a right to personal self defense. I should be allowed to do that, and by the way, when that crazy guy starts shooting in the mall, you're going to be grateful that I'm there to take him down before he hurts you. The good guy with a gun is real.

That narrative doesn't get out enough to the anti-gun crowd. People never hear about the good guy with a gun because those stories are not published in the mainstream media. We need to say, "Did you hear about that incident in Texas where that guy in the church had his own gun and took out the shooter?" Yeah, that one did make the news last year.

eJournal: Raise the issue; force the conversation, if needed.

Hammond: It really starts there. On the legal front, we need to find the right cases and have resources and people who are willing to bring them up. People can't self-fund. Clients paying out of their pocket to litigate these issues are limited in how far they can go. I told one, "We should absolutely appeal this. I'd like to get a transcript and go with it," and he said, "I'm out of money." Can you get backing from the California Rifle and Pistol Association or the NRA or other organizations to pay those legal fees and put in the resources?

Right now, all we have is a statute. We're going to have to get some appellate guidance on this new appeal process for CA carry licenses to give the trial court judges some guidance. Somebody's got to appeal these things and hopefully we pick the right cases. I do a lot of DUI defense, and I'm in the California DUI Lawyers Association. We bandy around, "How do we pick the right cases to appeal?" The CA DMV does procedurally nonsensical things, taking our clients' licenses away. We're very careful about which cases we take up on appeal because we don't want to make bad law.

eJournal: What's the bottom line for Network members?

Hammond: There is hope! We are making slow and steady progress in CA. I am optimistic about the current state of things. We're in a better place with respect to CA's firearms laws and concealed carry licenses than we were five years ago or even two and a half years ago, for sure. We're in a better place now than we were 10 months ago. We're making progress and there's light at the end of the tunnel. We are improving the situation in CA and I'm proud to be part of it.

eJournal: That's a great report and I'm proud of you and your work. Stay in touch and let us know what we can do. Thank you for all your time today telling us about it.

President's Message

Working as a Team

by Marty Hayes, J.D.

It's been a while since I reported about Gunsite training, which is where I try to go at least once a year to keep my skills sharp, and to learn new stuff. Normally, it is more skill maintenance and sharpening the edge of the sword, but in the case of the class I took most recently, it was more of a mental course than a skill-building course. That was exactly what I was hoping for.

My wife and I took Advanced Team Tactics for Two last month, and we were both well pleased with this first-time offering by Gunsite. The class was led by three of the most experienced instructors in the world, with a combined resume of over 100 years in the trenches of law enforcement, military and special ops contracting. Here are links to their biographies: https://www.gunsite.com/gunsite-instructors/freddie-blish/ , https://www.gunsite.com/gunsite-instructors/monte-gould/ , https://www.gunsite.com/gunsite-instructors/eric-ingersoll-2/ .

The lectures, blocks of range instruction and tactical exercises were divided up amongst the three instructors, and when one was done lecturing, the other two typically added their own perspectives, which sometimes differed from the others, but it was all good. I like choices.

One aspect of my personal training that was lacking was any formal training in working with a partner, except for a smattering which I got in law enforcement. Communications were stressed among the two partners, and we got pretty good at both verbally and non-verbally communicating what we were going to do and what we wanted our partner to do. Gila and I will take our lessons and adapt them to our own lifestyles, which is what I was hoping for when we signed up for the course. Students enrolled in this class included five couples and one father/son pair.

The curriculum was designed for advanced students, people who were skilled as shooters with impeccable gun handling, who had also taken training in advanced tactics as a solo defender. I never once felt the least bit unsafe, with moving and shooting exercises while extracting someone from a vehicle under fire which was the culmination of the training.

Let me share a short video of Gila and me extracting Diane Walls from a vehicle and getting her into a safe area. (Click on photo below.) As you can see, the actual exercise is walked at half speed, for safety reasons. We ran these several times, to get the reps in and ingrain the protocol. I suspect in real life, the action would be much quicker.

We worked as a team doing vehicle extractions, encounters on the street, and home defense scenarios. You tell yourself, "I am never searching my house." Oh, yeah? Every time you go to answer the door, that is a mini-search. You gonna call the cops whenever your teenager leaves the door open? How about when you have been caught up in a robbery or shooting in a public building. You just want to get out, but how about doing it safely?

In the photo, left, instructor Monte Gould runs Tom and Diane through a building search exercise.

A Gunsite course would not be complete without a class shoot-off. The last thing we did in the class was attempt to outshoot all the other teams on steel targets, and Gila and I tried our damnest to prevail. Did I mention all the other teams were highly skilled? Network members Tom and Diane Walls, beat Gila and me and the other teams, to claim the silver ravens awards class shoot off winners receive. Well done, comrades.

Attorney Question of the Month

Network Affiliated Attorney Steven M. Harris (Florida) brought to our attention a recent Florida appellate decision granting pretrial self-defense immunity, *Smith v. State,* available here: https://1dca.flcourts.gov/content/download/2436123/opinion/Opinion_2022-3034.pdf

From the facts of *Smith,* Attorney Harris asked his fellow Network Affiliated Attorneys to explore the following questions. The responses were numerous and we believe members will share our interest in the discussion that follows.

For a law enforcement officer or nonsworn, is there any caselaw or jury instruction (Federal or your state) which recognizes the unique and deadly nature of the threat presented by an attempted firearm disarm? Is there an independent statutory basis to independently assert deadly force justification? For example, that the disarm is the attempted commission of a robbery (unlawful taking of the firearm by force).

What arguments would you present in defense of an LEO or armed citizen who used deadly force to prevent being disarmed?

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A quick review of New York caselaw did not reveal any specific cases addressing "attempt to disarm" as a basis for a self-defense claim, though various self-defense efforts have failed where criminals tried to use self defense as an argument against people who tried to disarm the criminals (See *People v. King,* 178 A.D.3d 853, 116 N.Y.S.3d 44 [3 Dept. 2014]).

One thing is certain about arguing that an attempt to disarm represented a deadly threat to you: The case absolutely will be fact specific. The precise facts of the situation at issue will yield the legal result, because there is no rule which says that lawfully you can shoot anyone who tries to disarm you.

Example: Good Samaritan sees you point a gun at a person, and assumes that you are the bad guy. You shoot the good Samaritan as he tries to disarm you. The good Samaritan did not know that the other person was reaching for his own weapon, and that you were acting in self defense. The good Samaritan dies from your gunshot wound. Likely you will be charged with a crime, and what the jury will say is unknown.

In a different example, a criminal pulls a knife on you, and you pull your gun. The criminal grabs for your gun and you fire. Different facts, and likely different outcome.

Thus, the events that occurred before the attempt to disarm will make all the difference in your case.

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In Maryland, on its face, this legal question is simple to answer, but factually it's a mess.

Maryland breaks use of force into four categories:

Self-Defense,

Defense of Others,

Defense of Habitation,

and Defense of Property. A person is not allowed to use deadly force in defense of property, without exception in Maryland.

This writing will focus on self defense since that seems the form most applicable to the current question. A person may use deadly force if the user is not the aggressor, the user actually believed they were in danger of immediate and imminent bodily harm, that the belief was reasonable, and they use no more force than is reasonably necessary. There is no duty to retreat prior to the use of deadly force only if the route of escape is unclear or unknown, the user is in their own home, if they are lawfully arresting the "victim" or the user is the victim of a robbery.

Robbery in the State of Maryland is the taking of property by force or threat of force from a person's immediate possession. So, on its face, if a "robber" grabs the gun of a user one could argue no need to retreat and deadly force acceptable if the other factors weigh in favor of the user.

In reality, during a struggle there can be instances where a "robber" is separated from the firearm and the question becomes can the user use deadly force against a likely unarmed person. A judge or jury would have to decide if the user's belief that the danger was imminent and immediate was reasonable, and that can change from one second to the next in a struggle and from one judge or jury to the next when the case is in the courtroom. Also, many times "victims" claim that the gun was drawn unlawfully to start with, and they attempted to slap it down or get it away from the user to protect themselves when they were shot which makes the whole thing even more messy.

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If one finds themselves in a situation where they have used deadly force to defend themselves from an attempted disarmament it is imperative that they speak with an attorney before speaking with the police. These types of situations are very often not clear-cut events and can turn on what seem like minor details. A lawyer cannot tell a person what to say but they can make sure that the user is aware of the specific facts relevant to their event that must be reported, either to the investigating police officers or the judge or jury, in order to assert self defense.

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In both North and South Carolina, there is no duty to retreat if you are on your own property or any other place where you have the lawful right to be (so-called "Stand Your Ground" jurisdictions). You must, however, demonstrate that the use of deadly force was reasonable under the circumstances. In North Carolina, N.C. Pattern Jury Instruction 308.45 states that if circumstances create a reasonable belief in a person of ordinary firmness that an assault was necessary to protect from imminent death or great bodily harm, and this belief existed in the defendant's mind at the time, the assault would be justified by self defense. Moreover, there is a presumption of reasonableness in using deadly force in the case of a forcible entry of one's home (or other dwelling), automobile, or workplace (N.C. Gen. Stat. 14-51.2).

Similarly, the South Carolina Protection of Persons and Property Act, as interpreted in *State v. Glen* (2019), extends self-defense rights beyond the home, automobile, or business. The elements of self-defense in South Carolina include (1) the defendant not being at fault (not the instigator/aggressor), (2) the defendant being or believing they were in mortal danger, (3) if based on a belief, a reasonable person also believing deadly force was necessary under the same circumstances, and (4) the defendant having no other reasonable means to avoid the danger. (Even though the hypothetical involves civilians, exceptions exist if the "attacker" is a law enforcement officer who has properly identified themselves.)

In a situation like *Smith v. Florida,* where an attacker repeatedly strikes and attempts to disarm the defendant, any reasonable person would be justified in fearing for their life and using deadly force to protect themselves. In both North and South Carolina, you should and likely would be found immune from prosecution, but that does not mean that you won't be prosecuted (these are affirmative defenses/claims of immunity so you would need to raise those arguments to a judge).

If you find yourself in a similar situation, contact the police immediately to let them know that you were involved in a self-defense incident and a person needs medical care at your location. Distance yourself from the location of the shooting to the best of your ability and get to a safe location. When police arrive, place your firearm on the ground near you, raise your hands to show that you are not holding any weapons, let them know that you were the one who placed the call and that you have placed your firearm on the ground and are, therefore, not a threat to their safety. You should not make any statements about the incident to anyone (especially not to law enforcement, other first responders, or hospital staff if you have to go to the hospital, too) until you have spoken with an attorney. Even if you were completely in the right, with your adrenaline rushing, thoughts racing, and likely being traumatized by the experience, you can say the wrong things and your words can easily be misinterpreted and then used against you.

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When using lethal force, you enter the world of factual analysis. The premise of the questions is that disarming is an act that would reasonably put someone in fear of deadly harm or substantial injury. I think the first question is if the firearm was presented legally in the first place. If the answer is yes that means there was a fear of death and the conduct that results from that conduct would logically be a continuation of that legal conduct.

However, if the weapon was presented illegally it gets more interesting. A weapon presented illegally is a crime, but when there is an intervening action that is the disarming, the analysis is factual.

Was the person disarming law enforcement?

Was the disarming done by a known felon that had already threatened to kill?

So long as the fear of great bodily harm or death is continuing through factual events there will be a good defense to avoiding and defending against disarming.

Thank you, affiliated attorneys, for sharing your experience and knowledge. Members, please return next month when we will explore a new question.

Editor's Notebook

On Reasonableness

by Gila Hayes

"Reasonable and prudent" are words encountered in classes, articles, books and videos that discuss use of deadly force in self defense. Like the ideal of "common sense," I have to wonder if the emotional "it's all about me" attitude so prevalent today blinds many to the objective standard of what is a reasonable, prudent person. I started pondering the concept of reasonableness after Massad Ayoob's August interview about legal defenses for innocent people. The concept came up again in the interview with MN Attorney Blair Nelson, which leads this edition of the journal.

Acting to the standard of a reasonable person has been described as a duty. Failing to act reasonably or with prudence has been long recognized as creating liability for loss and injuries. This goes all the way back to 19th century England, legal commentators relate, when a farmer who stacked hay too close to some dwellings was warned that sparks from stoves and lanterns could ignite the hay. He stubbornly failed to acknowledge the risk of fire. Predictably, the haystack did indeed catch fire and damage the cottages.

While it is not hard to understand why a 19th century English court of common pleas found the farmer had not behaved within the standard of a reasonable person, he had not been given a specific model individual to mimic (as in the popular theme "What Would Jesus Do") because the "reasonable person" is hypothetical, something of an amalgamation of all the good, careful people we know who practice caution, care, and consideration. Although not specific, that's what is held up as the objective standard when our actions are being judged. Want examples of what doesn't meet the standard? Look to case law, as illustrated by Blair Nelson's explanation of the incident behind Minnesota's expansion of the duty to retreat. Blevins' actions on that train platform were so far outside normal standards that several courts have found his reaction to "come over here out of view of the cameras and let me slit your throat" unreasonable.

Digging deeper, the question of what is reasonable gets even more interesting. For example, children aren't expected to exercise the same good judgment a reasonable adult should demonstrate. There are interesting cases that point out that a two-year old that starts a fire isn't individually liable for the resultant destruction; a blind person isn't expected to act to the same standard as a sighted person, found another court. Reasonable behavior during an emergency is evaluated against what would be reasonable for an ordinary person facing a highly stressful situation where immediate response is required to avoid catastrophy, death or injury.

I found myself musing about these principles after August's interview with Massad Ayoob in which he emphasized the importance of defense attorneys striving to keep juries continually aware that the actions they are judging resulted from decisions made and actions taken during extremely compressed time frames when failure to act was likely to cost innocent life. Then, Blair Nelson, answering questions about how armed citizens should apply the expanded duty to retreat spelled out in the MN Supreme Court's *Blevins*' decision, emphasized the value of reasonable reactions and non-aggressive demeanor in word and action.

A third discussion of reasonableness reinforced Ayoob and Nelson's words when columnist and retired police officer and trainer Rich Grassi commented in his Tactical Wire (thetacticalwire.com) column about Supreme Court decisions applying standards to police use of force. His column mentioned *Graham v. Connor,* which the USSC decided in 1989, and held that officers are expected to be objectively reasonable when using force during a stop, arrest or seizure. Objective reasonableness relies on considering the facts and circumstances related to the use of force when analyzing whether what was done was appropriate to the situation.

In *Graham*, the USSC ruled, allow me to paraphrase, that the reasonableness of police use of force could not be judged through hindsight, which weighs not only the beginning, middle and end, but also what comes afterwards. Police, and by extension, private citizens aren't required to possess and exercise the gift of prophecy before using force to stop criminal violence. In *Graham*, standards may only reflect what a reasonable officer involved in the incident would perceive, "rather than with the 20/20 vision of hindsight … (t)he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation," said the court.

While not requiring omniscience, people who have special skills may be held to higher standards, as we see illlustrated in our expectation that doctors will know what to do in response to most medical emergencies.

There's an interesting spin-off to that expectation – what extra level of responsibility, if any, is expected of someone who controls something out of the ordinary like a dog or a bull that could be dangerous or one of those extra large motorhomes we see trundling down the highway with cars in tow? Unlike doctors, lawyers, or even drivers who navigate big freight trucks through traffic (albeit often longer, heavier and serving a commercial purpose so subject to stricter governmental regulation), Americans stand strong for the freedom to travel in motorhomes without begging a government bureaucrat for permission to pilot a high capacity vehicle, and although some states require additional license endorsements, not all do.

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Like an onion, thinking about reasonableness and who determines what is reasonable just gets increasingly interesting (or in the case of the onion, pungent) with each layer you peel away. In August, I was gifted a second pistol that's nearly identical to the one I carry. It had been quite a few years since I'd bought a new gun, and in the intervening time, Washington State had – no surprise here – implemented mandatory training before the gun store can hand over the firearm.

Despite my bad attitude about the mandate, the online course hosted by Vancouver, WA's Sporting Systems was pleasant, attractively produced and stressed at every opportunity the God-given rights of American citizens. Their online certification course tells the truth about gun restrictions while also meeting the requirements of WA's law requiring gun buyers to present a training certificate in order to take possession of a firearm. While it probably did not make me any more reasonable, it was a great example of making lemonade out of a ton of lemons.

In other states and federally, the past several decades have been a time of regaining a goodly number of freedoms armed citizens had lost to aggressive governments. To protect and expand on that progress, may I respectfully suggest, as Don Hammond did in his lead interview, that it is critical at every opportunity to come out of the closet and tell friends and relatives how you have invested in exceeding what society considers reasonable through taking multiple training courses (you have, haven't you?) over the years (yes, continuing education bears valuable dividends), your personal gun safety protocols (securing guns when they're not under your immediate control, in other words details that don't breach home or personal security) and the extra layers of security you place between your firearms and thieves, children, and others who visit or live in your home who aren't trained and responsible with deadly weapons.

Standards of reasonableness and prudence also apply to actions taken to protect human life. Whether taking extra cautions while driving, or going out of your way to avoid confrontations that may turn hostile, the things we talk about many times turn into the things we do – or the things of which we're accused. Like Blair Nelson suggested toward the end of his interview, eliminate the bombastic statements about "what I woulda done." Don't type it into an online discussion, don't say it out loud, and frankly, don't even think it. The thoughts we entertain tend to manifest as actions or slip out in our speech. When the behavior you imagine is voiced, it's not funny; it doesn't make you look invincible or admirable.

That's the small-scale version of how to avoid losing more self-defense rights. If Blevins had just shaken his head and walked past his verbal persecutors, if Rahimi had accepted his punishment for his violent and dangerous behavior, Americans would not face further incursions into self-defense rights in MN, and on the federal level, government would not have eroded some of the freedoms regained in the *Bruen* decision. Shutting up and moving along would have been the reasonable thing to do.

About the Network's Online Journal

The ***eJournal*** of the Armed Citizens' Legal Defense Network, Inc. is published monthly on the Network's website at https:// armedcitizensnetwork.org/our-journal.

Do not mistake information presented in this online publication for legal advice; it is not. The Network strives to assure that information published in this journal is both accurate and useful. Reader, it is your responsibility to consult your own attorney to receive professional assurance that this information and your interpretation or understanding of it is accurate, complete and appropriate with respect to your particular situation.

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To submit letters and comments about content in the eJournal, please contact editor Gila Hayes by e-mail sent to editor@armedcitizensnetwork.org.

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