



NEW YORK RULING THREATENS
YOUR SECOND AMENDMENT RIGHTS

DISTORTING BRUEN

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UNITED STATES COURTHOUSE

'STOP-AND-FRISK' IN THE ERA OF SHALL-ISSUE PERMITS

The U.S. Supreme Court case of New York State Rifle & Pistol Association, Inc. v. Bruen forced New York to respect Americans' right to effective self-defense. But in the context of whether a law enforcement officer can stop and search you – often called a "Terry stop" – it's a lot more complicated.



Have you ever waited until you were out of your vehicle to conceal your pistol on your person? Has any part of your pistol ever shown when you thought it was concealed? Have you ever carried your pistol in public and had it “print” against your clothing?

A very important decision was just handed down in a criminal appeal case out of the Eastern District of New York that will undoubtedly negatively affect all pistol permit holders in the state of New York. Equally troubling, the court’s decision will likely be persuasive to other states that follow the same ideology.

THE CASE OF ROBERT HOMER

In this recent decision, a New York City Police Department (NYPD) detective recognized a silver minivan used by a local gang. The detective observed the driver, later identified as Robert Homer, place a black handgun into his pants pocket and noted that he did not have “firearms discipline.” After placing the gun into his pocket, Homer walked into a deli to place an order and then returned to the vehicle. The detective contacted an officer on patrol that night and informed him that the driver had a gun. The patrol officer arrived at the scene, and the two NYPD officers pulled over the minivan and arrested and disarmed Homer.¹

PROBABLE CAUSE

As many people know, the Fourth Amendment protects citizens against unreasonable searches and seizures.² Pursuant to the Fourth Amendment, law enforcement officers generally must obtain a search warrant to seize property from an individual.³ Furthermore, the government bears the burden of demonstrating that its agents had probable cause to justify a warrantless arrest.⁴

The test for probable cause is one that is difficult to establish. In *Maryland v.*

Pringle (2003), the court said it is a “practical, nontechnical conception” that is “incapable of precise definition or quantification.”⁵ Additionally, the inquiry depends on the totality of the circumstances and is fact-intensive. It focuses on the facts and circumstances within the officers’ knowledge at the time of arrest.⁶

In the *Homer* case, the defense alleged that the arresting officer did not have probable cause to arrest and that the seizure of Homer’s pistol violated the Fourth Amendment. Here, they argued, “the question before the court in this case is whether, after the Supreme Court’s decision in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1 (2022), the arresting officer had probable cause when he saw a person with a firearm in public but did not know the person’s identity.”⁷

PROPER CAUSE

Bruen has changed the face of the law in more ways than many people thought it would, protecting more rights than just the Second Amendment.

As many people are aware, before the *Bruen* decision, the standard in the state of New York for a pistol permit to be issued was based on demonstrating “proper cause.”⁸ In order for this to be satisfied, a person needed to show that he or she had a “special need for self-protection distinguishable from that of the general community.” The U.S. Supreme Court struck down the proper-cause requirement for violating the Second and 14th Amendments of the U.S. Constitution.⁹

The logic that the NYPD asserted in the *Homer* case is that *Bruen* “has nothing to do with a probable cause determination.” Its argument was essentially threefold: New York law prohibits possession of a firearm; Robert Homer was seen with a firearm; and the NYPD had probable cause to arrest him. The government relied on

case law that did not align directly with its position and, in this case, claimed, “Mr. Homer did not reveal his prior criminal record or that he lacked a firearms license to the arresting officers.”¹⁰

Bruen seems to have changed the ways that police are able to gain probable cause for searches due to firearms being briefly in plain view. The police no longer have reasonable grounds to believe someone is committing a crime by carrying a concealed pistol when that person is unidentified.

HOW IT IMPACTS LAW-ABIDING CITIZENS

In the *Homer* case, the court took an alternate route that will end up being used to target legal gun owners who exercise their right to carry concealed in public.

Under New York law, specifically New York Criminal Procedure Law Section 140.50, police officers have the tools necessary to stop and identify individuals who are suspected of committing or have committed a crime. This is known as a Terry stop, where police officers are also allowed to frisk a person if they believe he or she may be armed.¹¹

The court applied the above standard in the *Homer* case. It claimed that “after *Bruen*, [police officers] have reasonable suspicion to justify a Terry stop when seeing someone they suspect has a gun.” If the police had done this in the case, they would have realized that Homer did not have a license to carry and that he was a felon in possession of a firearm.¹²

The end of this discussion by the Eastern District of New York will cause many gun owners problems if the police follow these instructions. There will be an increase in traffic stops for the purpose of getting people out of their cars to frisk them for weapons, which will be used as another way to end up searching vehicles. This decision was favorable for Homer since the gun was suppressed from evidence.¹³ However, many law-abiding citizens will be heavily burdened in their day-to-day lives.

A NUANCED INTERPRETATION

The recent ruling in the *Homer* case represents a significant moment in the ongoing dialogue surrounding gun rights and law enforcement practices. Influenced by the precedent set by

TERRY STOP STEPS

■ Follow these simple steps to ensure you do not have to deal with becoming a victim to a Terry stop:

- Ensure that your handgun is on you before you exit your vehicle.
- Keep your handgun concealed at all times.
- Place your handgun in a holster that does not reveal the outline of the gun.
- Always stay alert to your surroundings.

■ Jim Huntley, who lives in Southern Texas, has been a USCCA Member for about four years. He's spent more than twice that time on the road, traveling and camping in his trailer along the way. He frequently consults the USCCA's Reciprocity Map to understand the firearms laws in each state through which he passes.

Huntley has his Texas concealed carry license and, when able, trains at a range weekly and dry-fire practices daily.

"Every time I go to the gun range to practice," he said, "I always say a prayer to myself, 'Heaven forbid I ever have to use this. But if I do, make sure you hit the target intended. You can't put the bullet back.'"

Although he was brought up visiting a gun range and taught how to shoot and protect himself by his father, Huntley recognized the need for additional self-defense skills. That's where the USCCA stepped in. While Texas is a permitless carry state, Huntley chose to get a permit anyway. Most of the states through which he travels are permitless, so people ask him why he bothered to obtain a permit.

"Because I know that I'm 100 percent in the boundaries of the law," he tells them. "I've been properly trained. I continue my training."

Obviously not all of the states in which Huntley finds himself are so gun-friendly. For instance, his home state of New York, where he stays for months at a time, has stringent firearms laws, rendering his Texas concealed carry license irrelevant.

He never felt the need to carry concealed until a tragedy that occurred near a camping site changed his perspective. In 2019, he and his wife took their trailer and camped along the coast bordering Texas and Louisiana, which stretches along the Gulf of Mexico. He found his idea of paradise on Padre Island, one of the most beautiful shoreline preserves in the world.

"[W]e found a spot," Huntley said. "We had been there like five days, and we were totally alone by ourselves. Never saw anybody. It was just beautiful. Waking up in the morning and the sea turtles are hatching on the beach." He took note of the mile marker and, on their way back home, told his wife that he wanted to camp there again.

A few months later, a New Hampshire couple traveling



LIFE ON THE ROAD

through Texas on their way to Florida were murdered, and their RV and truck were stolen. The victims' bodies were found buried in a shallow grave.

"That was the same mile marker my wife and I were at," Huntley said. "That's the day I said, 'Honey, I never had the need for a pistol permit, never did because I always shot long rifle. Those days are done.' I went right back and applied for my permit and went through the process. And I feel good about it."

Huntley has been involved in martial arts for more than 30 years, but his body isn't what it used to be. A firearm has become the most reliable way to protect himself if he were to ever find himself facing a deadly threat.

"But you've got to know that you just can't pull out a gun," he emphasized. "The minute you bring that gun out, you better use it, you better know how to use it and [understand] the responsibility of using it."

Huntley said that educating yourself about how to stay out of trouble before you get into trouble should be at the forefront of everyone's mind. How to read body language. How to maintain a safe distance. Looking around first before you stick your head into something that may be going south. And rehearsing "what if?" scenarios before experiencing them for the first time in that critical moment.

"[I]f you don't [visualize] it and think about it and recognize it, you don't own it," Huntley indicated.

His favorite USCCA training resources are the YouTube videos and *Concealed Carry Magazine*.

"The YouTube videos are really, really good," he said. "They're really special. Especially when they have a legal point of view. And scenarios pointing out what this guy did right or this guy did wrong."

He has been immersed in Dorsey Kindler's series about the legal aftermath — or second fight — following a self-defense incident (Part 5 begins on Page 46) and appreciates how it takes readers through James Edwards' entire experience.

"[I]t's riveting, man," he said. "I mean, that's the real world."

Watching the YouTube videos and reading CCM allow Huntley to continue his education and choose what's best for him.

"I just can't say enough about what you guys do."

— Frank Jastrzemski, Contributing Editor

Bruen, the court's decision introduces a nuanced interpretation of probable cause, potentially impacting the daily lives of pistol permit holders statewide. With implications that transcend New York's borders, this ruling underscores the importance of vigilance and adherence to best practices for legal gun owners navigating the complex intersection of constitutional rights and law enforcement procedures. Its ramifications directly affect law-abiding gun owners as they exercise their constitu-

tional rights. As ongoing legal discussions unfold, it's crucial for individuals to remain vigilant and take proactive measures to safeguard themselves amidst evolving legal landscapes.

ENDNOTES

(1) United States v. Homer, 23-CR-00086 (NGG) (2024). (2) Manuel v. City of Joliet, 580 U.S. 357, 364 (2017). (3) United States v. Scopo, 19 F.3d 777, 782 (1994). (4) United States v. Delossantos, 536 F.3d 155, 158 (2008). (5) Maryland v.

Pringle, 540 U.S. 366, 370-71 (2003). (6) United States v. Ginsberg, 758 F.2d 823, 828 (1985). (7) United States v. Homer (2024). (8) New York Penal Law Section 400.00(2)(f). (9) New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. ____, 12 (2022). (10) United States v. Homer (2024). (11) Terry v. Ohio, 392 U.S. 1 (1968). (12) United States v. Homer (2024). (13) United States v. Homer (2024).

