

CERTIFIED FOR PARTIAL PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ZACHARY H.,

Respondent,

v.

TERI A.,

Appellant.

D081250

(Super. Ct. No. 22FDV01972N)

ORDER MODIFYING OPINION
AND CERTIFYING OPINION
FOR PARTIAL PUBLICATION

NO CHANGE IN JUDGMENT

THE COURT:

The court on its own motion orders this opinion, filed on October 6, 2023, modified as follows:

1. Throughout the opinion, Appellant's name shall now be "Teri A." and the Respondent's name shall now be to "Zachary H."
2. The first paragraph of page 2, the first sentence ending "and her son Zachary H." (see item 1, *ante*), add as footnote 1 the following footnote, which will require renumbering of all subsequent footnotes:

We refer to Teri A. and Zachary H. by their first names for clarity, intending no disrespect.

3. On page 16, the second sentence of the first paragraph, delete the words "United States Supreme" to that the sentence reads:

In *Bruen*, the Court held that New York’s public-carry licensing scheme violated the Second Amendment because “it prevent[ed] law-abiding citizens with ordinary self-defense needs from exercising their right to keep and bear arms.”

4. On page 16, the second paragraph, beginning “Here, however,” is deleted and the following paragraph is inserted in its place:

Here, however, the trial court’s findings in issuing the DVRO demonstrate that Teri is not a law-abiding citizen. Indeed, the court found Zachary’s testimony, in which he alleged Teri nearly ran him over with her car, to be credible. Moreover, as Justice Alito emphasized in his concurring opinion, “nothing about who may lawfully possess a firearm” was affected by the Court’s decision in *Bruen*, nor has it disturbed “restrictions that may be imposed on the possession or carrying of guns.” (*Bruen*, *supra*, 142 S.Ct. at p. 2157 (conc. opn. of Alito, J.)) Since *Bruen*, numerous California courts have held that the *Bruen* decision does not extend to statutes prohibiting the possession of firearms by individuals convicted of a felony, or statutes criminalizing the possession of illegal firearms. (See *People v. Alexander* (2023) 91 Cal.App.5th 469, 480 [rejecting Second Amendment challenge to statutes prohibiting individuals convicted of felonies from possessing firearms or ammunition]; *People v. Bocanegra* (2023) 90 Cal.App.5th 1236, 1250 [rejecting Second Amendment challenge to a statute prohibiting possession of an assault weapon].) Having previously concluded in *Altafulla* that section 6389 is analogous to a prohibition on “felon weapon possession,” and recognizing the California cases that uphold the prohibition of “felon weapon possession” post-*Bruen*—we conclude that *Bruen* does not call into question the lawfulness of firearms restrictions imposed on individuals subject to restraining orders.[fn]

5. On page 19, the fourth sentence of the first paragraph that begins “The *private* right to bear arms’ ” is modified so that the sentence reads:

“The *private* right to bear arms is not a ‘fundamental’ right under the Second Amendment to the United States Constitution” (*In re Evans* (1996) 49 Cal.App.4th 1263, 1270), and we therefore analyze an equal protection claim implicating the private right to bear arms by persons subject to a restraining order under the deferential rational basis test.

In addition, based on the sentence above, after the words “under the deferential rational basis test,” add as footnote 7 (see item 2, *ante*) the following footnote, which will require renumbering of all subsequent footnotes:

Following the United States Supreme Court’s decision in *Heller*, and its later decision in *McDonald v. City of Chicago* (2010) 561 U.S. 742, the court in *Delacy, supra*, 192 Cal.App.4th 1481 “called into question” the conclusion in *Evans* that the private right to bear arms is never a fundamental right. (*Id.* at p. 1494.) Even so, addressing an equal protection claim by a defendant convicted of a misdemeanor, the *Delacy* court nonetheless applied a rational basis test because persons found to have engaged in criminal misconduct “can claim no ‘fundamental’ right that would invoke elevated scrutiny under the equal protection clause.” (*Id.* at p. 1495.) Having previously determined that Teri is not among those law-abiding citizens for whom the Second Amendment guarantees the right to bear arms under *Heller and Bruen*, we similarly conclude the rational basis test applies to the review of her equal protection challenge.

There is no change in judgment.

FURTHER, this opinion was not certified for publication. It appearing the opinion meets the standards for partial publication, except part A of the discussion specified in California Rules of Court, rule 8.1100, the request pursuant to rule 8.1120(a) for partial publication is GRANTED.

IT IS HEREBY CERTIFIED that the opinion meets the standards for publication specified in California Rules of Court, rule 8.1105(c); and

IT IS ORDERED that the words “Not to Be Published in the Official Reports” appearing on page one of said opinion be deleted and the opinion herein be partially published except part A of the discussion in the Official Reports.

O’ROURKE, Acting P. J.

Copies to: All parties

BRANDON L. HENSON, Clerk of the Court of Appeal,
Fourth Appellate District, State of California, does hereby
Certify that the preceding is a true and correct copy of the
Original of this document/order/opinion filed in this Court,
as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

10/31/2023

BRANDON L. HENSON, CLERK

By A. Galvez
Deputy Clerk

