**IN THE SUPREME COURT OF THE STATE OF FLORIDA**

**DALE NORMAN**
Petitioner/ Defendant,

v.

CASE NO.: SC15-650
LT: 4D12-3525

STATE OF FLORIDA
_____/



**DEFENDANT'S AMENDED MOTION FOR REHEARING, RECONSIDERATION, AND CLARIFICATION**

COMES NOW the Defendant, by and through his undersigned counsel, and moves that the Court rehear and reconsider its decision in this case and as grounds therefore states:

1. Two judges of the Court either concurred in the judgment without joining the opinion of the Court or did not otherwise participate in the decision.

2. The Court misapprehended points of law and made erroneous conclusions of law in reaching its decision.

3. Based on prior precedent the Court's opinion is unclear, as to the effect on said prior precedent.

4. In Crane, the Third DCA held that there was no property interest in a Concealed Weapon Firearms License (CWFL). *Crane v. Department of State, Div. of Licensing*, 547 So. 2d 266 (Fla. 3rd DCA 1989).

5. The Third DCA held that retroactive application of Sec. 790.06 was not unconstitutional because the issuance of a CWFL was a "privilege and not a vested right". *Crane* at 267.

6. Defendant requests clarification as to whether, in light of this Court's ruling that a CWFL is adequate recognition of the right to bear arms, whether this indigent Defendant now has a vested property interest in his CWFL, contrary to the decision in *Crane*.

7. The Court's opinion states that CWFLs are generally available based upon objective criteria.

8. The Court misapprehends that an entire class of individuals, who have neither been convicted as that term is defined under Florida law, nor who have been held responsible for a criminal offense that does not result in the loss of constitutional rights, are barred from possessing a firearm for self-defense outside the home.

9. Specifically, anyone who has had a withhold of adjudication on any felony (Sec. 790.06(2)(k)); anyone who has had a conviction for misdemeanor possession of a controlled substance and has not had three years since termination of probation (Sec. 790.06(2)(e)); anyone who has had more than two convictions for misdemeanor driving under the influence within the last three years (Sec. 790.06(2)(f)); anyone who has been convicted or had a withhold of adjudication

for a misdemeanor such as assault, battery, or fighting within three years (Sec. 790.06(3)); is ineligible to obtain a license to exercise the fundamental right to bear arms, even though they have not otherwise suffered a loss of their civil rights.

10. Furthermore, merely being charged with a crime results in a suspension of the right to a CWFL and therefore the right to bear arms under this Court's decision. Sec. 790.06(3), Fla. Stat.

11.Despite any objective criteria established by the Legislature for the issuance of a CWFL, the fact remains that an individual who has not committed an offense that would deny them any other civil rights, is by this Court's opinion, denied the fundamental right to bear arms.

12. Despite not having suffered a loss of any other civil right, the aforementioned persons are denied the right to bear arms. This is contrary to the command of the U.S. Supreme Court that the right to keep and bear arms may not be singled out for specially unfavorable treatment. *McDonald v. City of Chicago,* 561 U.S. 742 (2010).

13. While the Court has declined to rule on the Defendant's argument regarding substantive due process, substantive due process could not have been raised in the lower courts.

14. Substantive due process is only at issue because the Fourth DCA determined that the privilege of a license is a sufficient alternative to the long-

settled principle that open carry, rather than concealed carry, is the right protected by the Second Amendment.

15. It is clear from the Court's ruling as well as the underlying statutory law that there is procedural due process for persons seeking or holding a CWFL, but the idea that one must first apply for a license prior to the exercise of a fundamental right raises issues of substantive due process that were not at issue until the Fourth DCA and this Court determined that the right to apply for a license was an adequate protection of the right to bear arms. The argument that the right to bear arms outside the home begins and ends with the ability to obtain a CWFL was not made by either party at trial or on appeal to the Fourth DCA, and based upon *Crane* was not at issue until after the opinion of the Fourth DCA in this case.

16. Consistent with the arguments made *supra*, individuals are denied the best method of the right of self-defense recognized in Art. I, Sec. 8, of the Florida Constitution on the basis of arbitrary determinations by the Legislature, that as to this right, additional disqualifications should exist.

17. This Court's reliance on the discredited work of Saul Cornell, is a direct repudiation of the U.S. Supreme Court's rulings in H*eller* and *McDonald* which relied on the research of Clayton Cramer, a noted Second Amendment scholar. Notably, Mr. Cornell appeared as the co-author an amicus brief in support of the non-prevailing side in *Helle*r.

18. This Court failed to appreciate the emphasis the *Heller* Court placed on *Nunn v. State*, 1 Ga. 243 (1846) when it stated:

> Its opinion perfectly captured the way in which the operative clause of the Second Amendment furthers the purpose announced in the prefatory clause, in continuity with the English right:
>
> "The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, which contravenes this right, originally belonging to our forefathers, trampled under foot by Charles I. and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own Magna Charta!" Ibid.

*Heller* at 612. This statement is directly contrary to this Court's conclusion that *Nunn* was cited merely for the proposition that the right to bear arms was not unlimited.

19. At least one of the leading constitutional scholars of our time has called this Court's reasoning in this case "quite weak". Volokh, The odd argument supporting the Florida open carry ban, https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/03/03/the-odd-argument-supporting-the-florida-open-carry-ban/ (Last visited March 15, 2017).

20. The State cannot meet any standard of heightened scrutiny solely by legislative deference, by allowing the State to do so the Court has effectively used a rational basis standard rather than the heightened scrutiny required by the U.S. Supreme Court.

21. This Court's conclusion that the ban at issue does not ban an entire class of arms (Opinion at Pg. 38) is demonstrably incorrect.

22. Sec. 790.06, Fla. Stat., only allows for the concealed carry of handguns, not long guns (such as rifles or shotguns) or any other class of legal firearm, assuming they could be concealed, therefore, all classes of firearms other than handguns are banned from being borne in defense of one's self outside the home.

23.The only differences between the issue before this Court and the issues presented to the U.S. Supreme Court in *Heller*, are whether the bearing of arms occurs within or outside of the home, and which entire classes of firearms are banned from being borne. In *Heller* it was handguns, in Florida it is all classes of otherwise legal firearms other than handguns.

WHEREFORE, Appellant/ Defendant respectfully requests this Court reconsider its ruling in this case and clarify whether *Crane* continues to be good law in light of this Court's ruling, and avoid the creation of a condition which deprives Defendant, and others, who wish to exercise their right to bear arms of substantive due process.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished this 16th day of March, 2016, via electronic service and e-mail, to the following:

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