

NEWS DESK

THE COURT SLAMS THE DOOR ON DOMESTIC ABUSERS OWNING GUNS

By Rachel Louise Snyder

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In 2009, a logger named Stephen Voisine shot and killed an American bald eagle. Bald eagles are protected under federal law, though Voisine said he'd believed it to be a hawk, which is also illegal to kill in his home state of Maine. Bird classification notwithstanding, Voisine's problems were just beginning. It turned out he had a history of domestic-violence charges, including violation of a restraining order, and a misdemeanor conviction related to hitting the woman he was living with. Federal law has long banned violent felons from owning or possessing firearms, and a 1996 law added to that category anyone convicted of domestic-violence misdemeanors. Voisine was sentenced to a year and a day in prison, and his guns were taken away. But Voisine, along with another defendant, named William Armstrong, who also had a history of domestic violence and possessed firearms, appealed, and their case made it to the Supreme Court, where Justice Clarence Thomas shocked Court-watchers last February by taking part in oral arguments for the first time in a decade: "One question," he said. "This is a misdemeanor violation. It suspends a constitutional right. Can you give me another area where a misdemeanor violation suspends a constitutional right?"



Earlier this week, the Supreme Court upheld a ban that prohibits abusers convicted of domestic-violence misdemeanors from owning or possessing firearms. Justice Elena Kagan wrote the majority opinion. Photograph by Alex Brandon / AP

Thomas's view was spelled out earlier this week in a dissent at the Supreme Court. The Court ruled, by a vote of 6–2 (Justice Sonia Sotomayor was the other dissenter), to uphold a ban that prohibits abusers convicted of domestic-violence misdemeanors from owning or possessing firearms. The defendants' lawyer had argued that the men's conduct toward their domestic partners was not intentional but rather merely "reckless." Or, to put it another way, neither man had meant to hurt anyone. They *went crazy, flew off the handle, blew a gasket, went ballistic, hit the ceiling*. Pick a euphemism. Point being: there is lots of available language that obviates personal responsibility.

The Voisine case revolved around two words—"reckless" versus "intentional." Was it unconstitutional to take away a perpetrator's Second Amendment rights if that perpetrator hadn't *meant* to hurt anyone? The Supreme Court's decision says no, it does not matter. Bad behavior is bad behavior. Justice Elena Kagan wrote the majority opinion, which followed on a 2014 Supreme Court case called *Castleman v. United States*, in which the Court ruled that any person convicted of misdemeanor domestic violence that involved *intentional* physical force was barred from possessing a firearm. *Castleman* left open the question of *reckless* behavior, which Voisine snapped shut. "The question presented here," Justice Kagan wrote, "is whether misdemeanor assault convictions for reckless (as contrasted to knowing or intentional) conduct trigger the statutory firearms ban. We hold that they do."

To many ears, a misdemeanor, reckless or intentional, sounds like no big deal. But it's important to point out that, when it comes to domestic violence, the seriousness of misdemeanors is markedly downplayed. Most domestic-violence incidents across the United States are charged as misdemeanors, though they are often part of a larger pattern of violence. Though most states list non-fatal strangulation as a felony, about a dozen still make it a misdemeanor charge. The burden of proof for victims can be impossibly high given that often there are no witnesses, no corroboration, and sometimes no visible injury at all. (Only fifteen per cent of strangulations have evidence visible enough to photograph.) In one case, made famous by the 2014 documentary "Private Violence," a young woman named Deanna Walters tells a harrowing story of being kidnapped and driven across state lines, during which time she was beaten so badly she suffered seizures; she was suffocated with a pillow, then woke when her kidnapper, who was also her estranged husband, poured Mountain Dew on her face. He later told police he'd nearly broken his own fingers beating her and had to resort to a flashlight. In photographs, Walters had two black eyes, caked blood on her lips, bloodshot sclera around her irises, and kneecaps so swollen and discolored that they were no longer visible. When police eventually caught her estranged husband—only after Deanna escaped—the local prosecutor told domestic-violence advocates that he would be charged with a misdemeanor.

Domestic violence is a crime of escalation. It begins with shouting, coercion, intimidation, and evolves into the physical. "By the time a woman has a broken nose or a black eye," Kit Gruelle, the program manager to the Utah Domestic Violence Coalition, says, "we've missed ninety per cent of it. . . . Physical violence is a punctuation mark to all the other tactics [an abuser] has employed."

For the National Rifle Association, the issue in the Voisine case was the question of "recklessness," and whether that term was too broadly construed. Writing at the time the case was heard, the N.R.A. argued that "an individual who injures a family member while recklessly driving could commit a qualifying domestic violence offense, potentially resulting in a permanent ban on firearm possession." Justice Kagan addressed this objection with an example from the oral arguments, saying that the incident could not be the result of a mere accident: "If a person lets slip a door that he is trying to hold open for his girlfriend, he has not actively employed ('used') force even though the result is to hurt her. But if he slams the door shut with his girlfriend following close

behind, then he has done so—regardless of whether he thinks it absolutely sure or only quite likely that he will catch her fingers in the jamb.”

The dangerousness of guns and domestic violence is well documented; their presence increases a victim’s homicide risk eightfold, and access to guns is one of the three highest risk indicators for domestic-violence homicide. But a gun’s usefulness can reside also in its power as a visible threat, what Teresa Garvey, an attorney adviser for Aequitas, a resource for domestic-violence prosecutors, calls an “environment of intimidation.” Often, she says, guns are placed somewhere simply as a way to remind a victim that they are always at the ready. Gruelle and other domestic-violence advocates tell stories of how, often, abusers merely sit cleaning their guns, keeping them in view. One woman told me that on every family holiday, at some point, her father would order everyone to get the hell out of the house or he’d get his guns. He eventually murdered her mother.

Even the existence of a federal ban on firearm possession for misdemeanors or felonies doesn’t mean that the statutes are enforced—police are often loath to ask abusers about guns, small jurisdictions frequently have no central storehouse, background checks might not turn up domestic-violence charges, and judges may not order abusers to relinquish guns. For all that she endured, Deanna Walters was lucky; her ex-husband, who had carried her over state lines, was charged with a felony in federal court, rather than a misdemeanor in state court, and wound up sentenced to twenty-one years in prison. Thankfully, that court, at least, was less reckless with her future than her ex-husband had intentionally been with her life.

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