civics books. Yet neither can we find that Vanaria's conduct is attributable to his employer, the county. "

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D02-10/C:13-1464:J:Griesbach:aut:T:fnOp:N:1287965:S:0 (last accessed Feb. 19, 2014).

Guns: Ninth Circuit Strikes San Diego's "Good Cause" Requirement for Concealed Carry Permits, Widens Split Among Appeals Courts

Peruta v. County of San Diego, No. 10-56971 (9th Cir. Feb. 13, 2014).

In a case which implicitly challenges California's public carry gun policies overall, the Ninth Circuit has invalidated a San Diego law requiring that concealed carry permit applicants show "good cause." In doing so, it directly confronts Second, Third and Fourth Circuit holdings.

California generally prohibits the open or concealed carriage of a handgun, whether loaded or unloaded, in public locations. Nonetheless, one may apply for a license to carry a concealed weapon in the city or county in which he or she works or resides. The applicant must demonstrate "good moral character" and establish "good cause." California delegates to each city and county the power to issue a written policy setting forth procedures for obtaining a concealed-carry license.

San Diego County's "good cause" requirement calls for "[A] set of circumstances that distinguish the applicant from the mainstream and causes him or her to be placed in harm's way." Good cause is "evaluated on an individual basis" and may arise in "situations related to personal protection as well as those related to individual businesses or occupations." But mere concern for "one's personal safety alone is not considered good cause."

Plaintiffs Edward Peruta and others were denied concealed-carry licenses because they could not establish "good cause." In October 2009, they sued the County of San Diego and its sheriff under 42 U.S.C. § 1983, requesting injunctive and declaratory relief. Peruta's lead argument was that, by denying him the ability to carry a loaded handgun for self-defense, the County infringed his Second Amendment right to bear arms.

The district court granted the County's motion for summary judgment. Conceding that the Second Amendment "encompasses Plaintiffs' asserted right to carry a loaded handgun in public," the district court nevertheless upheld the County policy under intermediate scrutiny. The court reasoned that California's "important and substantial interest in public safety"—particularly in "reduc[ing] the risks to other members of the public" posed by concealed handguns' "disproportionate involvement in life-threatening

crimes of violence"—trumped the applicants' allegedly burdened Second Amendment interest. Peruta and his colleagues appealed.

HELD: The Ninth Circuit reversed and remanded, finding the County's permitting requirement to be unconstitutional.

DISCUSSION: In a lengthy opinion the Circuit Court found that the Second Amendment clearly allows the carrying of a gun outside the home for self-defense. The court identified substantial historical evidence that, as of the drafting of the Constitution, there was a right to carry a firearm in public to defend oneself. It also cited various precedents stating that, while there was no inherent right to concealed carry, if a ban on concealed carry eliminated public carry overall, it could not stand. The Ninth Circuit sided with the Seventh Circuit's *Moore v. Madigan* analysis--and expressly challenged the Second, Third and Fourth Circuits, which had found that the Second Amendment does not create such an absolute right.

The Circuit Court found that none of those opinions had sufficiently reviewed the relevant history:

> For example, in *Kachalsky,* the Second Circuit's perfunctory glance at the plaintiffs' historical argument misunderstood the historical consensus regarding the right to bear arms outside the home. . . .[I]n its brief historical analysis, the court missed a critical factor: the cases it cites in favor of broad public carry restrictions adhere to a view of the Second Amendment that is and always has been incorrect. . . .All three cases interpret the Second Amendment as a militia-based (rather than a self-defense- centered) right; they uphold regulations on carrying pistols in public because pistols are not the type of weapons that would be used by militia men.
> (citation omitted).

The Ninth Circuit also found the Second, Third and Fourth Circuits had misapplied "intermediate scrutiny" in deferring to state legislatures in New York, New Jersey and Maryland, respectively. The restrictions on public carry in those states were not narrowly tailored to accomplish specific and justifiable governmental goals: "In light of the states' failure to demonstrate sufficient narrow tailoring in *Drake, Woollard,* and *Kachalsky,* the gun regulations at issue in those cases should have been struck down even under intermediate scrutiny." (citation omitted).

The Circuit Court reversed and remanded, invalidating San Diego's "good cause" permitting requirement for concealed carry. "To be clear, we are not holding that the Second Amendment requires states to permit concealed carry. But the Second Amendment does require that the states permit *some form* of carry for self-defense outside the home."

DISSENT: Circuit Judge Thomas dissented, noting that the majority opinion not only overturns the San Diego statute but "upends the entire California firearm regulatory

scheme." He found the majority to have improperly intertwined *public* carry with *concealed* carry. The result was inconsistent with *Heller,* which had determined that "the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues." *District of Columbia v. Heller,* 554 U.S. 570, 635 (2008). *Heller* had then emphasized that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions," which it labeled as "presumptively lawful." *Id.* at 626-27 & n.26.

The dissent identified an entirely different set of historical antecedents, which depicted concerns about the unrestricted public carry of weapons. "[W]e can be sure that 'the right we inherited from our English ancestors' left ample leeway for restrictions on the public carrying of firearms in the interest of public safety." It also found the majority's allegiance to *Moore v. Madigan* to be flawed, because *Moore* involved Illinois' virtual blanket prohibition against all public carry of firearms. Here, the issue was limited to concealed carry. Because concealed carry *per se* was not a core Second Amendment right, the dissent found that the legislature's weighing of public good against private restriction satisfied intermediate scrutiny and made the San Diego "good cause" permitting requirement constitutional.

http://www.nraila.org/media/5744087/peruta_nra_9th_cir_amicus.pdf (last accessed Feb. 19, 2014)

Search and Seizure: No "Seizure" of Decedent or Vehicle Where Insufficient Evidence That Police Caused Fleeing Car to Crash

Wourms v. Fields and City of Evansville, No. 13-1178 (7th Cir. Feb. 5, 2014).

In April 2007 Dane Wourms, an intoxicated 16-year old, got in a car and took to the streets. His mother called the police and said her son was drunk and "going crazy." The police identified the car, which was driving erratically, and signaled the teenager to pull over. Wourms sped up and a chase ensued. He hit speeds as high as 75-80 miles an hour in a 25-mile an hour zone and fled police for some time before he crashed, dying as a result of the collision.

Wourms' father, as personal representative, filed suit under Section 1983 alleging an unconstitutional seizure of the son's person and property based on the theory that the police intentionally rammed the car. He sued the police officer involved and the joined the City as a potential indemnitor. Determining that no reasonable jury could find that the police car actually hit Wourms' car – a necessary finding for a Fourth Amendment claim under Section 1983--the district court granted summary judgment to the officer. Wourms' estate appealed.