AWAITING NY CARRY CASE: JUSTICE ALITO

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While awaiting the Supreme Court's decision in *New York State Rifle & Pistol Association, Inc. v. Bruen* (oral argument was heard November 3, 2021), the last in our series of articles expositing the writings of various current Supreme Court Justices regarding the Second Amendment reflects upon the contribution of New Jersey native Justice Samuel Anthony Alito, author of *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the landmark decision applying *District of Columbia v. Heller*, 554 U.S. 570 (2008), to the States. However, given that *McDonald* is already known far and wide, we thought it more beneficial to illuminate the learned justice's concurring opinion in Caetano v. Massachusetts, 577 U.S. ___ (2016).

There, Massachusetts' highest state tribunal upheld the law under which Jaime Caetano was convicted for the unlawful possession of an electronic stun gun. Vacating the conviction and returning the matter to the courts below, the supreme bench (writing per curiam, i.e., an unsigned opinion) renounced the lower court's reasoning as contradictory to Heller's edicts that: 1) the Right to Keep and Bear Arms encompasses even firearms unknown at the Founding; 2) a firearm cannot be prohibited as "dangerous" or "unusual" simply because it embodies new technology; and 3) the liberty interest guaranteed by the Second Amendment is not delimited to weapons useful only in warfare.

Justice Alito added these essential facts: Caetano had been threatened repeatedly by an ex-boyfriend who physically overmatched her, and who had ignored multiple restraining orders with impunity. When he finally accosted Caetano as she was leaving her workplace, Jaime displayed a stun gun, and—without using it—managed to finally scare him off.

Joining fully with his brethren, the learned Justice gave short shrift to the state court's contention that since stun guns did not exist at the time of the Founding, they fell outside the ambit of the Right to Keep and Bear Arms. Not only refuting that erroneous notion, but simultaneously displaying the vitality of our guaranteed liberties in modern times, Justice Alito opined that "[e]lectronic stun guns are no more exempt from the Second Amendment's protections, simply because they were unknown to the First Congress, than electronic communications are exempt from the First Amendment, or electronic imaging devices are exempt from the Fourth Amendment."

Justice Alito's *coda* was particularly memorable, and we are confident it shall resonate in all areas of constitutional law for years to come. Accordingly, we quote it in full: "If the fundamental right of self-defense does not protect Caetano, then the safety of all Americans is left to the mercy of state authorities who may be more concerned about disarming the people than about keeping them safe." Truly, final words that may well prove pivotal in the Supreme Court's resolution of *Bruen*.

And on that note, we bring to a conclusion our own modest writings in support of the precious liberty known as the Right to Keep and Bear Arms. ■