

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PRENTICE KILGORE,

Defendant.

ORDER

08-cr-66-bbc

Defendant Prentice Kilgore has been charged by the grand jury with knowing and unlawful possession of a firearm as a convicted felon in violation of 18 U.S.C. § 922(g)(1). He has filed a motion to dismiss the indictment against him on the ground that the charge is unconstitutional.

Defendant is one of many charged or convicted persons who believe that the United States Supreme Court's decision in District of Columbia v. Heller, 128 S. Ct. 2783 (2008), means that no one in possession of a firearm can be convicted of a crime, whatever the kind of gun and whatever the status of the person possessing it. They are wrong. Heller holds only that the District of Columbia cannot constitutionally ban handgun possession in the home for use in self-defense by persons not otherwise prohibited from gun possession. The

Court has not addressed the right of the states to impose restriction on handgun possession and it has said explicitly that its opinion in Heller is not intended to suggest that *all* gun laws and firearms restrictions are unconstitutional. Id., at 2816-17 (“[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill . . .”).

If the government proves, as it has charged, that defendant is a convicted felon and that he was in knowing possession of a firearm, a jury could find defendant guilty of violating 18 U.S.C. § 922(g)(1). Such a conviction would not violate the Second Amendment to the United States Constitution. Nothing in Heller restricts the federal government from criminalizing the possession of firearms by felons.

ORDER

IT IS ORDERED that defendant Prentice Kilgore’s motion to dismiss the indictment against him is DENIED.

Entered this 26th day of August, 2008.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge