
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — VOLUNTARY WAIVER OF RIGHT TO BEAR ARMS

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State v. Cole

Filed June 27, 2025, and amended August 26, 2025

No. 23-1391

Background. In this case, the defendant, Jordan Kevin Cole, consented to a one-year domestic abuse protective order issued in March 2022 pursuant to Iowa Code chapter 236. The order expressly prohibited him from possessing firearms under Iowa Code section 724.26(2)(a) and required him to surrender any firearms to law enforcement. While the order was in effect, Cole pawned several firearms. He was charged with and convicted of two counts of unlawful possession of a firearm while subject to a protective order, a class "D" felony under Iowa Code section 724.26(2)(a). The district court sentenced him to concurrent five-year terms of imprisonment, suspended the five-year terms, and placed Cole on probation. The written sentencing order, however, provided that if probation were revoked, the sentences would run consecutively.

Issue. Whether Iowa Code section 724.26(2)(a) violates the Second Amendment of the United States Constitution and Article I, Section 1A of the Iowa Constitution (state constitutional right to bear arms); and whether the district court erred by requiring consecutive sentences in the event of probation revocation.

Holding. The Iowa Supreme Court affirmed Cole's convictions but remanded for entry of a corrected sentencing order. It held that Cole's constitutional challenges failed because Cole voluntarily waived his state and federal constitutional rights to possess firearms when he consented to the protective order. It further held that the sentencing order unlawfully required consecutive sentences, in conflict with the district court's oral pronouncement.

Analysis. The majority opinion reasoned that Cole knowingly consented to the protective order, which explicitly prohibited firearm possession under both state and federal law. By agreeing to its terms, Cole waived his federal and state constitutional rights for the duration of the order. The Court compared this waiver to other contexts in which defendants voluntarily relinquish constitutional protections, such as guilty pleas, waivers of jury trial, or consent searches. The Court emphasized that a formal colloquy was not required, citing *United States v. Reese*, 627 F.3d 792, 804 n.3 (10th Cir. 2010), which held that consenting to a protective order prohibiting firearms amounted to a waiver of Second Amendment rights. The Court also distinguished *Class v. United States*, 583 U.S. 174 (2018), finding it inapplicable because Cole did not merely plead guilty but consented to a civil order expressly restricting firearm rights. On the sentencing issue, the Court determined that the written order's mandatory consecutive sentencing provision was unlawful because

it conflicted with the judge's oral statement, which preserved discretion. Accordingly, the convictions were affirmed, but the case was remanded for entry of a corrected order.

Dissent. Justice May, joined by Justices Oxley and McDermott, dissented. The dissent argued that Cole's convictions should be overturned because his consent to the protective order did not constitute a knowing and voluntary waiver of his Second Amendment rights. In the dissent's view, the absence of an explicit judicial colloquy addressing the waiver of a fundamental constitutional right rendered the purported waiver deficient. The dissent further reasoned that unlike in *United States v. Rahimi*, 602 U.S. 680 (2024), where the protective order contained express findings of dangerousness, Cole's order lacked such findings, making the firearm prohibition constitutionally suspect. The dissent concluded that enforcing Iowa Code section 724.26(2)(a) under these circumstances impermissibly infringed on Cole's constitutional rights.

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