

June 23, 2014

TO: ANDREW BIGBEE
Reg. No. 04727-041

FR: JOHN LAMBROS, JAILHOUSE LAWYER
Reg. No. 00436-124
Website: www.Lambros.Name

RE: QUESTION: WHETHER A .177 CALIBER RIFLE PELLET GUN IS A "FIREARM" WITHIN
THE DEFINITION OF MINNESOTA CRIMINAL LAW.

THE FOLLOWING MINNESOTA STATUTES STATE:

1. MINNESOTA STATUTE 624.713 CERTAIN PERSONS NOT TO POSSESS FIREARMS.
 - a. Subdivision 1. INELIGIBLE PERSONS. "The following persons not be entitled to possess a PISTOL or semiautomatic military-style assault weapon or, except for clause (1), ANY OTHER FIREARM:
 - b. PLEASE NOTE: BIGBEE POSSESSED A .177 CALIBER PELLET "RIFLE" ON OR ABOUT OCTOBER 22, 2013.
 - c. BIGBEE COMPLAINT: Clearly states violation of OFFENSE:
 1. PROHIBITED PERSON IN POSSESSION OF A FIREARM (FELONY)
Minn. Stat. §624.713, Subd. 1(2), 2(b); \$609.11
Penalty: 5-15 years and/or \$30,000.00.
 - d. Lambros believe that the term "ANY OTHER FIREARM" does not apply to Bigbee.
 - e. Lambros believes that the term "POSSESS A PISTOL OR SEMI-AUTOMATIC MILITARY-STYLE ASSAULT WEAPON" applies to Bigbee.
2. MINNESOTA STATUTE 624.712 DEFINITIONS.
 - a. Subdivision 1. SCOPE. As used in SECTIONS 624.711 to 624.717, the terms defined in this section shall have the meaning given them.
 - b. PLEASE NOTE: Bigbee offense §624.713 terms are defined within this section.
 - c. Subdivision 2. PISTOL. "'PISTOL' includes a weapon designed to be fired by the use of, or having a barrel or barrels of a length less than 18 inches in the CASE OF A SHOTGUN or having a barrel of a length less than 16 inches iIN THE CASE OF A RIFLE (1) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substance; or (2) for which the PROPELLING FORCE IS A SPRING, CARBON DIOXIDE,

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AIR OR OTHER GAS, OR VAPOR.

'PISTOL' DOES NOT INCLUDE A DEVICE FIRING OR EJECTING A SHOT MEASURING .18 OF AN INCH, OR LESS, IN DIAMETER and commonly known as a 'BB GUN,' a scuba gun, a stud gun or nail gun used in the construction industry or childrens guns or toys."

See, 2010 version (current version) of this statute.

3. MINNESOTA STATUTE 609.66 DANGEROUS WEAPONS. [\$609.66, Subd. 1d(e)(1)] (Supp. 2012)

a. Subdivision 1. Misdemeanor and gross misdemeanor crimes ...

Subd. 1d(e)(1): As used in this Subdivision states:

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"'BB GUN' MEANS A DEVICE THAT FIRES OR EJECTS A SHOT MEASURING .18 OF AN INCH OR LESS IN DIAMETER;"

4. MINNESOTA STATUTE 609.66, Subdivision 1(h)(b) CONTAINS A CROSS-REFERENCE to the game and fish laws located in Minnesota Statute Chapter 97A. That chapter defines the term "FIREARM" 'means a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air. See, 97A.015, Subd. 19. (2013 version)

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a. PLEASE NOTE: §97A refers to Minnesota game and fish laws.

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b. CHAPTER 97A.015 STATES A "BB GUN" IS A FIREARM.

5. MINNESOTA COURT OF APPEALS HELD IN 1995: "a BB GUN IS A FIREARM WITHIN THE MEANING OF MINN. STAT. §609.66, Subd. 1e(a)." See, STATE OF MINNESOTA vs. DYLAN ARBER NEWMAN, 538 N.W.2d 477 (October 3, 1995).

a. Newman was charged with a drive-by shooting using a .177 caliber pellet BB gun.

b. Newman argued that the BB GUN WAS NOT A "FIREARM" within the meaning of Minn. Stat. §609.66, subd. 1e(a) (Supp. 1993).

c. This is not the first case that an appellate court has relied upon SECTION 97A.015's DEFINITION OF FIREARM IN A CRIMINAL CASE. Citing, STATE vs. SEIFERT, 256 N.W.2d 87, 88 (Minn. 1977) (Seifert had used a .177 caliber BB pistol.) Offers an overview of the Minnesota SUPREME COURT'S VIEW in the case.

d. "As a fundamental rule of STATUTORY INTERPRETATION, this court should 'look first to the specific STATUTORY LANGUAGE and be guided by its natural and most obvious meaning.' HEASLIP vs. FREEMAN, 511 N.W.2d 21, 22 (Minn.App. 1994), review denied (Minn. Feb. 24, 1994); see also Minn.Stat. §645.16 (1992)(when words of STATUTE are clear and free from ambiguity, court shall not disregard the letter of the law).

e. Section 609.66 is entitled "DANGEROUS WEAPONS," BUT DOES NOT DEFINE THAT OR THE TERM "FIREARM" as used in that section. The criminal code defines BB GUN as " a device that fires or ejects a SHOT MEASURING .18 OF AN INCH OR LESS IN DEAMETER." MINN. STAT. §609.66, subd. 1d(c)(1)(Supp. 1995).

** 1. PLEASE NOTE: §609.66, subd. 1d(e)(1) (2012) states:
"BB GUN" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;"

f. "SECTION 609.66 now contains a CROSS-REFERENCE TO THE GAME AND FISH LAWS LOCATED IN MINN.STAT. ch. 97A. That chapter defines the term "FIREARM" as 'a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air.' Minn. Stat. §97A.015, subd. 19 (1992). Thus, under the games and fish laws' definition, A BB GUN IS A 'FIREARM.'"

** 1. THE 2012 VERSION OF SECTION 609.66, APPLICABLE HERE, CROSS-REFERENCES THE FEDERAL FIREARM LAWS. See, §609.66, Subd. 1h(c). This subsection references:

a. Title 18 U.S.C. §923, "as a firearms importer, manufacturer, or dealer, who is acting in full compliance with ALL FEDERAL REQUIREMENTS UNDER THAT LICENSE, ... FOR THE PURPOSE OF SELLING OR OTHERWISE TRANSFERRING IN ANY LAWFUL MANNER THE DEVICES OR FIREARMS TESTED WITH THE DEVICE, to:

b. "(3) a person who is licensed by the U.S. Department of Justice, under U.S. Code, Title 18, Section 923, as a firearms importer, ..., WHO IS ACTING IN FULL COMPLIANCE WITH ALL FEDERAL REQUIREMENTS UNDER THAT LICENSE."

** (Bingo)

FEDERAL LAW: Title 18 U.S.C. §923(a) states:

"No person shall engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition, until has filed an application with and received a license to do so from the Attorney General."

18 U.S.C. §923(c) states:

"Upon the filing of a proper application and payment of the prescribed fee, the Attorney General shall issue to a qualified applicant the appropriate license which, SUBJECT TO THE PROVISIONS OF THIS CHAPTER [18 U.S.C. §§ 921 et seq.] AND OTHER APPLICABLE PROVISIONS OF LAW,"

Title 18 U.S.C. §921 DEFINITIONS, states:

§921(a)(3) THE TERM 'FIREARM' MEANS (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE;

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§921(a)(7): THE TERM 'RIFLE' MEANS a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade **TO USE THE ENERGY OF AN EXPLOSIVE TO FIRE ONLY A SINGLE PROJECTILE THROUGH A RIFLED BORE FOR EACH SINGLE PULL OF THE TRIGGER.**

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UNITED STATES SENTENCING COMMISSION "GUIDELINES MANUAL":

Sentencing Guidelines: §1B1.1 APPLICATION INSTRUCTIONS. (2013)

COMMENTARY - Application Notes:

1. The following are **DEFINITIONS OF TERMS TAHT ARE USED** frequently in the guidelines amd are of general application (except to the extent expressly modified in respect to a particular guideline or policy statement):

(G) **"FIREARM" MEANS** (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to **EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE;** (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any destructive device. **A WEAPON COMMONLY KNOWN AS A "BB" OR PELLET GUN, THAT USES AIR OR CARBON DIOXIDE PRESSURE TO EXPEL A PROJECTILE IS A DANGEROUS WEAPON BUT NOT A FIREARM.**

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Also see, **U.S. vs. WARDWICK**, 350 F.3d 446, 453 (4th Cir. 2003):

"A PELLET GUN, on the other hand, has been characterized as 'a dangerous weapon **BUT NOT A FIREARM.**' See, **U.S. vs. DAVIS**, 202 F.3d 212, 218 fn. 8 (4th Cir. 2000)(citing Guidelines commentary)."

THE NATIONAL FIREARMS ACT:

Title 26 U.S.C. §5861(d): [26 U.S.C. §§ 5801 et seq.]

26 U.S.C. §5861(d) provides in pertinent part that it is **UNLAWFUL TO RECEIVE OR POSSESS A FIREARM** that is not registered to him in the National Firearms Registration and Transfer Record.

26 U.S.C. §5845 **DEFINITIONS FOR PURPOSES OF 26 U.S.C. §§5801 et seq.**

(c) **RIFLE.** The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to **USE THE ENERGY OF THE EXPLOSIVE IN A FIXED CARTRIDGE TO FIRE ONLY A SINGLE PROJECTILE THROUGH A RIFLED BORE FOR EACH SINGLE PULL OF THE TRIGGER, ...**

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PARAGRAPH 5 (continued):

g. "Thus, under the game and fish laws' definition, **A BB GUN IS A 'FIREARM.'** We can rely on that definition only if it does not conflict with the criminal statute, Minn. Stat. §609.66. See, Minn.Stat. §97A.021, Subd. 1 (1992) ('provision of the game and fish laws that is **INCONSISTENT WITH THE CODE OF CRIMINAL PROCEDURE OR OF PENAL LAW IS ONLY EFFECTIVE UNDER THE GAME AND FISH LAWS'**) **WE SEE NO INCONSISTENCY HERE, BECAUSE SECTION 609.66 CONTAINS NO DEFINITION OF 'FIREARM'."**

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h. **JUDGE DAVIS (dissenting):** Judge David offers the definition of **FIREARM** offered within the **AMERICAN HERITAGE DICTIONARY** which is the same as **BLACK'S LAW DICTIONARY, 8th Edition:**

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FIREARM: A weapon that expels a projectile (such as a bullet or **PELLET**) by the **COMBUSTION OF GUNPOWDER OR OTHER EXPLOSIVE.**

"That definition excludes guns that use compressed air or gas, not explosive powder, as the propellant. The weapon here is a compressed gas gun, a 'glorified' **BB GUN.**"

h. **FOOTNOTES: (1995 LAW - AFTER THIS CASE OCCURRED)**

"The Minnesota Legislature has recently enacted a new section, entitled **"CIVIL DISORDER"**, which prohibits training others or demonstrating to others **'HOW TO USE OR MAKE FIREARM, or ...** **1995 MINN. LAWS ch. 244, §23 (setting forth Minn.Stat. §609.669, subd. 1). THE LEGISLATURE DEFINES THE TERM 'FIREARM', FOR PURPOSES OF THIS NEW SECTION ONLY, AS**

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any weapon which is designed to or may readily be converted to **EXPEL ANY PROJECTILE BY THE ACTION OF AN EXPLOSIVE;**

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Id. (setting forth Minn. Stat. §609.669, subd. 2(2). **THIS STATUTE TOOK EFFECT AUGUST 1, 1995 AND APPLIES TO CRIMES committed on or after that date. 1995 Minn. Laws ch. 244, §43."**

6. **RULE OF LENITY: "Construction of Criminal Statutes"**

a. Due to time restrictions at this writing, I suggest parties review U.S. Supreme Court's views of the **RULE OF LENITY** at:

62 L. Ed. 2d 827 (Annotation)

7. VAGUENESS CHALLENGE TO DEFINITION OF FIREARM:

a. BIGBEE states that if the weapon at issue constitutes a FIREARM UNDER MINNESOTA STATE LAW, then the statute allowing for such a finding is UNCONSTITUTIONALLY VAGUE.

b. SPECIFICALLY, BIGBEE ASSERTS THAT BY FAILING TO SPECIFICALLY DEFINE WHETHER A "BB GUN RIFLE FIRING OR EJECTING A SHOT MEASURING .18 OF AN INCH, OR LESS IN DIAMETER, FOR WHICH THE PROPELLING FORCE IS A SPRING, CARBON DIOXIDE, AIR OR OTHER GAS, OR VAPOR - MINNESOTA STATE LAW §624.712, Subd. 2. PISTOL - PISTOL - IS A FIREARM WITHIN THE SCOPE OF MINNESOTA STATUTES §§ 624.713 and 624.712, THE STATUTES LACK ENOUGH CLARITY TO INFORM PEOPLE WHAT CONDUCT IS PROHIBITED. -

"PISTOL" does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a "BB GUN"; a scuba gun, a stud gun, or nail gun used in the construction industry or children's pop guns or toys. See, Minn. Stat. 624.712, Subd. 2.

FACTS CHALLENGING VAGUENESS:

8. Andrew Bigbee is a convicted felon due to federal violations of the U.S. Drug Laws, serving a 17-year sentence and supervised release due to same on or about October 22, 2013, the date of offense in this above-entitled action.

9. Bigbee knew, as a federal felon, he could not purchase or possess traditional firearms, as per his legal research while incarcerated. If Bigbee possessed a firearm he would be convicted of being a FELON IN POSSESSION OF A FIREARM IN VIOLATION OF TITLE 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

10. Bigbee knew from his legal research while incarcerated, that "A PELLET GUN, on the other hand, has been characterized a 'a dangerous weapon BUT NOT A FIREARM". See, U.S. vs. WARDWICK, 350 F.3d 446, 453 (4th Cir. 2003), citing U.S. vs. DAVIS, 202 F.3d 212, 218 FN 8 (4th Cir. 2000)(citing Guideline commentary). Also see, UNITED STATES SENTENCING COMMISSION GUIDELINES, §1B1.1, COMMENTARY, Application Notes: (G) "FIREARM MEANS" (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the ACTION OF AN EXPLOSIVE; (ii) the frame or receiver of any such WEAPON; (iii) any firearm muffler or silencer; or (iv) any destructive device. A WEAPON, commonly known as a "BB" OR PELLET GUN, that USES AIR OR CARBON DIOXIDE PRESSURE TO EXPEL A PROJECTILE IS A DANGEROUS WEAPON BUT NOT A FIREARM."

11. Please note that the U.S. Sentencing Commission refers to a "BB" OR PELLET GUN AS A WEAPON. See, U.S.S.G. §1B1.1, Commentary Note (G).

b.

12. Title 18 U.S.C. §921(a)(3) SETS FORTH THE DEFINITION OF THE TERM "FIREARM", as used in chapter 18 U.S.C. §921 et seq.:

- "(A) any WEAPON (including a starter gun) which will or is designed to or may readily be converted to EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE;
- (B) the frame or receiver of any such WEAPON;
- (C) any FIREARM muffler or FIREARM silencer; or
- (D) any destructive device.

THE VOID-FOR-VAGUENESS DOCTRINE:

13. "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ORDINARY PEOPLE can understand what CONDUCT IS PROHIBITED and in a manner that DOES NOT ENCOURAGE ARBITRARY AND DISCRIMINATORY ENFORCEMENT." POSTERS 'N' THINGS, Ltd. vs. U.S., 511 U.S. 513, 519 (1994)(internal quotation omitted); see also, GRAYNEED vs. CITY OF ROCKFORD, 408 U.S. 104, 108-109 (1972). A statute is UNCONSTITUTIONALLY VAGUE only if it "fails to give a person OF ORDINARY INTELLIGENCE FAIR NOTICE THAT HIS CONTEMPLATED CONDUCT IS FORBIDDEN." U.S. vs. BATCHELDER, 442 U.S. 114, 123 (1979)(internal quotations omitted); see also, U.S. vs. WILLIAMS, 553 U.S. 285, 304 (2008). "[P]erfect clarity and precise guidance" is not required. WILLIAMS, 553 U.S. at 304 (quoting WARD vs. ROCK AGAINST RACISM, 491 U.S. 781, 794 (1989)). To succeed on a VAGUENESS CHALLENGE the party asserting the challenge must show that the statute is vague "not in the sense that it requires a person to conform his conduct to an imprecise but comprehensible normative standard BUT RATHER IS THE SENSE THAT NO STANDARD OF CONDUCT IS SPECIFIED AT ALL." COATES vs. CITY OF CINCINNATI, 402 U.S. 611, 614 (1971).

LANGUAGE OF MINNESOTA STATUTE §624.713 AND §624.712 (Definitions) AT ISSUE HERE IS THE DEFINITION OF "A DEVICE FIRING OR EJECTING A SHOT MEASURING .18 OF AN INCH, OR LESS, IN DIAMETER AND COMMONLY KNOWN AS A 'BB GUN'".

14. Minnesota Statute §624.713 defines certain persons that may not possess a FIREARM.

15. Minnesota Statute §624.712 offers the definitions or words used within §624.713.

16. Minnesota law defines AN EXEMPTION FOR PERSONS WHO MAY NOT POSSESS A FIREARM:

- a. 'PISTOL' does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a 'BB GUN', a scuba gun, a stud gun or nail gun used in the construction industry or children guns or toys.

See, §624.712, Subdivision 2. PISTOL.

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17. Section 624.712 DOES NOT define the following words:

- a. FIREARM;
- b. RIFLE;
- c. WEAPON.

18. Section 624.712 CONTAINS A CROSS-REFERENCE TO THE FOLLOWING FEDERAL LAWS: See, Subdivision 7(3) and 8.

a. "The WEAPONS listed in clause (1), except those listed in items (iii), (ix), (x), (xiv), and (xv), are the WEAPONS; the importation of which was barred by the BUREAU OF ALCOHOL, TOBACCO, and FIREARMS OF THE UNITED STATES DEPARTMENT OF THE TREASURY IN JULY 1989.

** Except as otherwise specifically provided in paragraph (d), A FIREARM IS NOT a 'semiautomatic military-style assault WEAPON' if it is generally recognized as particularly suitable for or readily adaptable to SPORTING PURPOSES under UNITED STATES CODE, Title 18, Section 925, paragraph (d)(3), OR ANY REGULATIONS ADOPTED PURSUANT TO THAT LAW.

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** PLEASE NOTE: The above clearly states, "A FIREARM IS NOT ... if it is generally recognized as particularly suitable for or readily adaptable to SPORTING PURPOSES under UNITED STATES CODE, TITLE 18, Section 925, paragraph (d)(3), OR ANY REGULATIONS ADOPTED PURSUANT TO THAT LAW."

19. TITLE 18 U.S.C. §925: As stated above within paragraph 18, §925 offers the following information that is CROSS-REFERENCED FROM MINN. Statute 624.712:

a. §925(d): "The Attorney General shall authorize a FIREARM or ammunition to be imported or brought into the United States or any possession thereof if the FIREARM or ammunition --"

b. §925(d)(3): "is of a type that does not fall within the DEFINITION of a FIREARM AS DEFINED IN SECTION 5845(a) of the Internal Revenue Code of 1954 [26 USCS §5845(a)] and is generally recognized as particularly suitable for or readily adaptable to SPORTING PURPOSES,"

20. TITLE 26 U.S.C. §5845: As stated above within paragraph 19, §5845 offers the following information that is CROSS-REFERENCED FROM 18 U.S.C. §925:

*** (a) For the purposes of this Chapter - "FIREARM. The term 'FIREARM' means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (3) a RIFLE having a barrel or barrels OF LESS THAN 16 INCHES IN LENGTH;

** "(c) RIFLE. - The term 'RIFLE' MEANS a WEAPON designed or redesigned, made or remade, and INTENDED TO BE FIRED FROM THE SHOULDER and designed or redesigned and made or remade TO USE THE ENERGY OF THE EXPLOSIVE IN A FIXED CARTRIDGE TO FIRE ON A SINGLE PROJECTILE through a rifled bore for each single pull of the trigger, and shall include any such WEAPON which may be readily restored to fire a fixed cartridge."

** "(e) ANY OTHER WEAPON. The term 'ANY OTHER WEAPON' means any WEAPON or device WHICH A SHOT CAN BE DISCHARGED THROUGH THE ENERGY OF AN EXPLOSIVE, Such term SHALL NOT INCLUDE a pistol or a revolver having a rifled bore, or rifled bores, or WEAPONS designed, made, or INTENDED TO BE FIRED FROM THE SHOULDER AND NOT CAPABLE OF FIRING FIXED AMMUNITION."

DOES MINNESOTA STATE LAW MAKE A DISTINCTION BETWEEN "PISTOLS" AND "RIFLES"?

21. A review of federal cases that have offered an overview as to any DISTINCTIONS BETWEEN "PISTOLS" AND "RIFLES" under Minnesota State law only resulted in the following:

a. U.S. vs. WIND, 986 F.2d 1248, 1251-52 (8th Cir. 1992):

** "However, WIND was NOT found in possession of a PISTOL as prohibited by Minn. Stat. §624.713 subd. 1(b); HE WAS FOUND IN POSSESSION OF A RIFLE. U.S. vs. TRAXEL, 914 F.2d 119, DOES NOT MAKE A DISTINCTION BETWEEN PISTOLS AND FIREARMS AND WE FOUND NO STATE CASES [Minn.] DEFINING RIFLES AS PISTOLS. Cf. STATE vs. HARRISON, 279 Minn. 310, 312, 156 N.W. 2d 763, 765 (1968) (RIFLES DIFFERENTIATED FROM PISTOL); STATE vs. ALLEN, 375 N.W.2d 82, 83 (Minn. Ct. App. 1985) (sawed off shotgun may be a PISTOL BY STATUTORY DEFINITION, Minn. Stat. §609.67 Subd. 1(c), 624.712 subd. 2) The 1975 statute could have prohibited all FIREARMS, which would have included BOTH PISTOLS AND RIFLES, but did not do so until 1987." Id. at 1251.

b. WIND, 986 F.2d at 1252, Circuit Judge Magill, concurring stated:

** "Although Wind's order of discharge does not contain an express limitation, we STILL MUST DETERMINE WHETHER MINNESOTA LAW PROHIBITS HIM FROM POSSESSING THE RIFLE AT ISSUE. If MINNESOTA LAW did prohibit him from possessing the RIFLE, his 1987 conviction would be considered for purposes of sentence enhancement even though the order of discharge did not contain an express limitation. HOWEVER, MINNESOTA LAW DOES NOT PROHIBIT FELONS FROM POSSESSING RIFLES. See, Minn. Stat. §624.713, subd. 1(b) (prohibiting a felon only from possessing a pistol)."

** c. U.S. vs. SONCZALLA, 561 F.3d 842, 845 (8th Cir. 2008),
REVIEWED MINNESOTA LAW §624.713, Subd. 1: (PERSONS NOT TO
POSSESS FIREARMS)

** "In 1975, Minnesota enacted a law prohibiting a person convicted
of a 'crime of violence' from possessing a PISTOL 1975
Minn. Laws ch. 378, §3 (codified at Minn. Stat. §624.713, Subd.
1 (Supp. 1975)). The statute was amended in 1993 to apply to,
IN ADDITION TO PISTOLS, "semiautomatic military-style assault
weapons," 1993 Minn. Laws ch. 326, art. 1, §27 (codified at Minn.
Stat. §624.713, subd. 1 (Supp. 1993), and it was amended in 1994
to apply to "ANY OTHER FIREARM," 1994 Minn. Laws ch. 636, art.
3, §27 (codified at Minn. Stat. §624.713, subd 1 (1994)). Finally,
in 2003, the statute was amended to impose a lifetime ban on
the possession of FIREARMS by a person convicted of a crime of
violence (not at issue here) . ." Id. at 845.

PLEASE NOTE: The court does not state whether a RIFLE IS A
FIREARM. Again, the Statute does not define a RIFLE.

d. U.S. vs. COLLINS, 321 F.3d 691, 697 (8th Cir. 2002):

The Eighth Circuit cited WIND, 986 F.2d at 1252:

"... , the concurrence turned to the question of 'WHETHER
MINNESOTA LAW PROHIBITS HIM FROM POSSESSING THE RIFLE AT ISSUE.'
The concurrence concluded that although Minnesota law barred
felons from possessing PISTOLS, IT DID NOT PROHIBIT FELONS
FROM POSSESSING RIFLES. Id. (citing Minn. Stat. §624.713, subd.
1(b)). Thus, the concurrence agreed that Wind's conviction
could not be used to enhance his sentence. Id."

BINGO

e. PETERSON, BY AND THROUGH PETERSON vs. INDEPENDENT SCHOOL
DISTRICT NO. 811, 999 F. Supp. 665 (Dist. of Minn. 1998):

DAVID S. DOTY, U.S. District Court Judge clearly AGREED THAT
A "BB GUN RIFLE" IS A "DANGEROUS WEAPON", citing Minn. Stat.
§609.66, subd. 1d(a) and §609.66, subd. 1d(b). Id. at 668 and
FootNote 3.

FACTS:

1. MINORS - HIGH SCHOOL BOYS FOUND A BB GUN RIFLE in the
bed of a truck, and one of the boys raised the gun [Rifle]
TO HIS SHOULDER ON SCHOOL PROPERTY. Id. at 665.

2. At all relevant times on October 8, 1994, the boys [MINORS]
possessed the BB GUN RIFLE on property of Wabasha-Kellogg High
School in Wabasha County MINNESOTA.

** 3. Wabasha City Police Officer TODD BAAB "proceeded to the
home of the STUDENT WHO OWNED THE GUN AND DETERMINED THAT THE

RIFLE WAS A BB GUN." Id. at 668

4. "Hartshorn, defendant Mattison, Officer Baab, and WABASHA CITY POLICY CHIEF DAVID KRUEGER met on October 10, 1994, to discuss the GUN INCIDENT. BECAUSE POSSESSION OF A WEAPON on school property is a felony offense, FN. 3 a police investigation ensued. ..." Id. at 668.

5. FOOTNOTE 3: Minn. Stat. §609.66, subd. 1d(a) provides:

"Whoever possesses, stores, or keeps a DANGEROUS WEAPON or ... OR BB GUN ON SCHOOL PROPERTY ... Further, Minn. Stat. §609.66, subd. 1d(b) provides that "whoever possesses, ... OR A BB GUN ON SCHOOL PROPERTY IS GUILTY OF A GROSS MISDEMEANOR." Id. at 675.

f. DANIELS vs. DOWNING, 2003 U.S. DIST. LEXIS 1826 (Dist. Of Minn. January 30, 2003)

1. FOOTNOTE 2: BB GUN IS A "WEAPON" FOR PURPOSES OF MINNEAPOLIS CODE OF ORDINANCES §393.150.

2. Please note within the BACKGROUND of the case that Plaintiff Daniels lived in Minneapolis, Minnesota and was experiencing problems with PIGEONS AT THE DUPLEX, "SHE CALLED THE UNIVERSITY OF MINNESOTA FOR ADVICE AND WAS INFORMED THAT SHE COULD SCARE THE PIGEONS AWAY BY SHOOTING AT THEM WITH A "BB GUN". SHE THEN BOUGHT A MARKSMAN MODEL 1717 "BB GUN".

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3. The "BB GUN" was a RIFLE.

ADDITIONAL CASE CITES AND QUOTES TO SUPPORT "VOID-FOR-VAGUENESS DOCTRINE":

22. It is a fundamental tenet of due process that "[n]o one may be required at peril of life, liberty or property to speculate as to the MEANING OF PENAL STATUTES." LANZETTA vs. NEW JERSEY, 306 U.S. 451, 453 (1939). A criminal statute is therefore INVALID if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden." See, CONNALLY vs. GENERAL CONSTRUCTION CO., 269 U.S. 385, 391-393 (1926). So too, vague SENTENCING PROVISIONS may pose constitutional questions if they do not state with sufficient clarity the consequences of violating a given criminal statute. See, U.S. vs. EVANS, 333 US 483 (1948).

"FAIR NOTICE" - DUE PROCESS CLAUSE:

23. **WHAT IS AT ISSUE HERE:**

"A device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a "BB GUN".

See, Minn. Statute 624.712 **Subdivision 2. PISTOL.** (Definitions used in section §624.713 - **FELON IN POSSESSION OF A FIREARM.**)

24. Mr. Bigbee understands that Minnesota Courts are free to give the term - "PISTOL" and "RIFLE" - whatever meaning they wish as a matter of state law, and the Federal Court is obliged to accept their interpretation. See, WELTON vs. NIX, 719 F.2d 969 (8th Cir. 1983).

25. The only issue here is the constitutional one: whether the State of Minnesota violated ANDREW BIGBEE'S due process rights by failing to give him "FAIR NOTICE" of what was criminal. Also, whether the decision by the State of Minnesota, County of Hennepin, District Court for the Fourth Judicial District, to issue a "COMPLAINT" FOR THE ARREST AND PROSECUTION OF BIGBEE for possession of a "DEVICE FIRING OR EJECTING A SHOT MEASURING .18 OF AN INCH, OR LESS, IN DIAMETER AND COMMONLY KNOWN AS A 'BB GUN'", was contrary to or an unreasonable application of prior United States Supreme Court "FAIR NOTICE" precedent.

PRIOR SUPREME COURT "FAIR NOTICE" PRECEDENT:

26. Please refer to above paragraphs 13 and 22. Not included within those paragraphs was BOUIE vs. CITY OF COLUMBIA, 378 U.S. 347, 350-351 (1964) (hereinafter "BOUIE") ("The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed.") Id. at 351.

SEVERAL WAYS A CRIMINAL DEFENDANT CAN BE DENIED "FAIR NOTICE":

27. One of the ways to be denied "FAIR NOTICE" is where the STATUTORY LANGUAGE IS EXCESSIVELY VAGUE. See, BOUIE. Also see, KOLENDER vs. LAWSON, 461 U.S. 352 (1983); CONNALLY vs. GENERAL CONSTR. CO., 269 U.S. 385 (1926).

** 28. Another is when a court applies a CRIMINAL STATUTE in a manner that could NOT BE FAIRLY ANTICIPATED EITHER BECAUSE OF THE NARROWNESS AND PRECISENESS OF THE STATUTORY LANGUAGE or because of contrary judicial precedent, OR BOTH. See, ROGERS vs. TENNESSEE, 532 U.S. 451, 457-460 (2001); BOUIE, 378 U.S. at 350-351. An UNANTICIPATED JUDICIAL EXPANSION of a criminal statute is the same as RETROACTIVE LEGISLATIVE LAWMAKING, which raises similar due process concerns and, more directly, is prohibited by the Ex Post Facto Clause. Id.

"EXCESSIVE" VAGUENESS:

29. Again, due process based on VAGUENESS, the Supreme Court made clear that the vagueness must be "EXCESSIVE" - essentially to the point of providing

no guidance whatsoever.

30. In this action, the issue of "EXCESSIVE" vagueness is very simple:
- a. Does the term "PISTOL" and "RIFLE" contain the same EXEMPTION? ("Pistol" does not include See, 624.712, Subd. 2. Pistol.

WHETHER MINNESOTA STATE STATUTE §624.712 and §624.713 IN THIS ABOVE-ENTITLED CASE AN UNANTICIPATED "JUDICIAL EXPANSION" THAT VIOLATED DUE PROCESS?

31. The seminal case addressing an UNANTICIPATED JUDICIAL EXPANSION OF A STATE CRIMINAL STATUTE is the Supreme Court decision in BOUIE vs. CITY OF COLUMBIA, 378 U.S. 347 (1964). In that case, two black defendants were convicted of violating a South Carolina trespass statute that prohibited "entry upon the lands of another ... after notice from the owner or tenant prohibiting entry ..." BOUIE, 378 U.S. at 350-351. The defendants appealed their conviction to the Supreme Court, contending that the statute on its face prohibited ONLY the entry upon the property of another after notice was not allowed and that they were not afforded "FAIR NOTICE" under the DUE PROCESS CLAUSE of the South Carolina Supreme Court's construction that the statute also applied to remaining on the premises of another after being asked to leave. Id. at 348-350.

32. In a 6-3 decision, the Supreme Court held that the defendants had been denied "FAIR NOTICE" under the DUE PROCESS CLAUSE. The court concluded that the language of the statute gave them "NO WARNING WHATEVER" and that the State court's construction was "clearly at variance with the statutory language". Id. at 355-356. In addition, the Court also looked to prior South Carolina precedent that it characterized as consistently referencing a "PRIOR NOTICE" requirement and concluded that the state court's construction did not have the "slightest support in prior South Carolina decisions." Id. at 356-359.

33. With respect to this case, the argument is clear, the State of Minnesota's construction of Minn. Statute §624.712, Subd. 2 "EXEMPTION", as to:

"a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a 'BB GUN'"

could not have been fairly anticipated. Like BOUIE, §624.712, Subd. 2 "EXEMPTION" is based on the NARROWNESS OF THE STATUTORY LANGUAGE. Therefore, the common meaning of the terms:

- a. GUN - "BB GUN";
- b. PISTOL;
- c. RIFLE;
- d. FIREARM.

are not defined with sufficient definiteness that ordinary people can understand EXACTLY WHAT WEAPONS ARE "FIREARMS" UNDER MINNESOTA STATE LAW.

CONCLUSION - THIS IS A WORK IN PROGRESS:

34. This "MEMORANDUM" by John Gregory Lambros, JailHouse Lawyer to Andrew Bigbee, as to the question:

a. Whether a .177 caliber RIFLE pellet gun is a "FIREARM" within the definition of Minnesota Criminal Law and Minnesota Statutes §624.713 (Felon in possession of a Firearm) and 624.712 (Definitions for §624.713);

is a work in progress, as Lambros believes public awareness needs to be developed due to Minnesota's unconstitutionally vague statutory definition of a "FIREARM" found in §624.712 that CROSS-REFERENCES THE FEDERAL LAW TITLE 18 U.S.C. §925:

b. "(a)(1) The provisions of this chapter [18 U.S.C. §§ 921 et seq.], except"

that specifically states within TITLE 18 U.S.C. §921. "DEFINITIONS":

c. "(a) As used in this chapter [18 U.S.C. §§ 921 et seq.] -"

d. "(3) The term "FIREARM" MEANS (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile BY THE ACTION OF AN EXPLOSIVE;"

35. The key words within §624.712 that refers to Title 18 U.S.C. Section 925, Paragraph (d)(3),:

a. "OR ANY REGULATION ADOPTED PURSUANT TO THAT LAW."

36. The weapon at issue here, .177 caliber RIFLE PELLETT GUN, is not a FIREARM, as it did not "expel a projectile by the action of an explosive", as required by Title 18 U.S.C. §921(3) and Minnesota Statute §624.712.

37. Prosecuting attorney ROGER J. FELLOWS (146195), Assistant County Attorney for Hennepin County, must be contacted by the Citizens of Minnesota, as to the unconstitutionally vague Minnesota Statute §624.713 and §624.712 that will incarcerate ANDREW JEROME BIGBEE for 5 to 15-YEARS for the possession of a .177 CALIBER RIFLE PELLETT GUN. The Minnesota statutes did not give Mr. Bigbee fair notice that his conduct was forbidden.

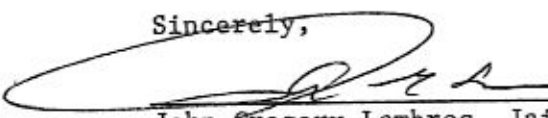
38. Please contact Assistant County Attorney Roger J. Fellows at:

a. C2100 Government Center, Minneapolis, Minnesota 55487. Telephone: (612) 348-0817; and reference case

b. STATE OF MINNESOTA vs. ANDREW JEROME BIGBEE, City Attorney File No. 13-6580. Track ID: 2689521. District Court for the Fourth Judicial District.

and request that the State of Minnesota DISMISS THE "COMPLAINT" in this action.

Sincerely,


John Gregory Lambros, JailHouse Lawyer, Reg. No. 00436-124, USP Leavenworth, P.O. Box 1000, Leavenworth, Kansas 66048-1000. WEBSITE: www.Lambros.Name

June 30, 2014

TO: ANDREW BIGBEE
Reg. No. 04727-041

FR: JOHN GREGORY LAMBROS, JailHouse Lawyer
Reg. No. 00436-124
Website: www.Lambros.Name

RE: QUICK REFERENCE GUIDE TO STATUTES LISTED WITHIN:

June 23, 2014 "MEMORANDUM" REGARDING QUESTION, "WHETHER A .177 CALIBER RIFLE PELLET GUN IS A "FIREARM" WITHIN THE DEFINITION OF MINNESOTA CRIMINAL LAW?"

PAGE 1:

Paragraph 1: Minnesota Statute §624.713; §609.11.

Paragraph 2: Minnesota Statute §624.712; §§ 624.711 to 624.717; §624.713.

PAGE 2:

Paragraph 3: Minnesota Statute §609.66 DANGEROUS WEAPON.

Paragraph 4: Minnesota Statute §609.66; Minnesota Statute Chapter 97A.

Paragraph 5: Minnesota Statute §609.66;
STATE OF MINNESOTA vs. DYLAN ARBER NEWMAN, 538 N.W.2d 477 (1995);
Minn. Stat. Chapter 97A.015;
Minn. Stat. §645.16;

PAGE 3:

Paragraph 5 (continued)

Title 18 U.S.C. §923;
Title 18 U.S.C. §921 et seq.;
Title 18 U.S.C. §921(a)(3);

PAGE 4:

Paragraph 5 (continued)

United States Sentencing Commission "GUIDELINES MANUAL";
U.S.S.G. §1B1.1;
U.S. vs. WARDWICK, 350 F.3d 446, 453 (4th Cir. 2003);
U.S. vs. DAVIS, 202 F.3d 212, 218 fn. 8 (4th Cir. 2000);

THE NATIONAL FIREARMS ACT;
26 U.S.C. §5861(d) [26 U.S.C. §§5801 et seq.];
26 U.S.C. §5845 - Definitions for 26 USC §§5801 et. seq.;

PAGE 5:

Paragraph 5 (continued)

Minn. Stat. **§609.66**;
Minn. Stat. **§97A.021, Subd. 1** (1992);
1995 Minn. Laws Ch. 244, **§23** (setting for Minn. Stat. **§609.669, Subd. 1**);
Minn. Stat. **§609.669, subd. 2(2)** (1995);
Rule of Lenity - 62 L.Ed. 2d 827 (Annotation);

PAGE 6:

Paragraph 7:

Vagueness Challenge to Definition of Firearm;
Minn. Stat. **§624.713**;
Minn. Stat. **§624.712**;

Paragraph 8:

No cite;

Paragraph 9:

18 U.S.C. **§922(g)(1)** and **924(a)(2)** - **FELON IN POSSESSION OF FIREARM**;

Paragraph 10:

U.S. vs. WARDWICK, 350 F.3d 446, 453 (4th Cir. 2003);
U.S. vs. DAVIS, 202 F.3d 212, 218 Fn. 8 (4th Cir. 2000);
U.S.S.G. **§1B1.1, Commentary Note (G) "FIREARM MEANS"**;

Paragraph 11:

U.S.S.G. **§1B1.1, Commentary Note (G)**.

PAGE 7:

Paragraph 12:

18 U.S.C. **§921(a)(3)**
18 U.S.C. **§921 et seq.**

Paragraph 13:

VOID-FOR-VAGUENESS DOCTRINE;
POSTERS 'N' THINGS, Ltd. vs. U.S., 511 US 513, 519 (1994);
GRAYNED vs. CITY OF ROCKFORD, 408 US 104, 108-109 (1972);
U.S. vs. BATCHELDER, 442 US 114, 123 (1979);
U.S. vs. WILLIAMS, 553 US 285, 304 (2008);
WARD vs. ROCK AGAINST RACISM, 491 US 781, 794 (1989);
COATES vs. CITY OF CINCINNATI, 402 US 611, 614 (1971).

PAGE 7. (continued)

LANGUAGE OF MINNESOTA STATUTE §624.713 and §624.712 (Definitions) AT ISSUE HERE IS THE DEFINITION OF "A DEVICE FIRING OR EJECTING A SHOT MEASURING .18 OF AN INCH, OR LESS, IN DIAMETER AND COMMONLY KNOWN AS A "BB GUN".

Paragraph 14:

Minn. Stat. §624.713;

Paragraph 15:

Minn. Stat. §624.712;

Paragraph 16:

EXEMPTION FOR PERSON WHO MAY NOT POSSESS A FIREARM;
Minn. Stat. §624.712, Subdivision 2. PISTOL.

PAGE 8:

Paragraph 17:

Minn. Stat. §624.712;
FIREARM;
RIFLE;
WEAPON.

Paragraph 18:

Minn. Stat. §624.712 - CROSS-REFERENCE TO FEDERAL LAW;
18 U.S.C. §925, paragraph (d)(3), OR ANY REGULATIONS ADOPTED
PURSUANT TO THAT LAW;

Paragraph 19:

18 U.S.C. §925; 925(d); and §925(d)(3);
Minn. Stat. §624.712;
26 U.S.C. §5845(a).

Paragraph 20:

26 U.S.C. §5845; - CROSS-REFERENCED FROM 18 USC §925;

PAGE 9:

DOES MINNESOTA LAW MAKE A DISTINCTION BETWEEN "PISTOLS" and "RIFLES"

PAGE 9: (continued)

Paragraph 21:

U.S. vs. WIND, 986 F.2d 1248, 1251-52 (8th Cir. 1992);
Minn. Stat. §624.713, Subd. 1(b);
U.S. vs. TRAXEL, 914 F.2d 119 (8th Cir. 1990);
STATE vs. HARRISON, 279 Minn. 310, 312, 156 N.W. 2d 763, 765 (1968);
Minn. Stat. §609.67, Subd. 1(c);
Minn. Stat. §624.712 subd. 2;

PAGE 10:

Paragraph 21 (continued):

U.S. vs. SONCZALLA, 561 F.3d 842, 845 (8th Cir. 2008);
Minn. Stat. §624.713, Subd. 1; (For the years 1975, 1993, & 1994)
U.S. vs. COLLINS, 321 F.3d 691, 697 (8th Cir. 2002);
PETERSON, BY AND THROUGH PETERSON vs. INDEPENDENT SCHOOL DISTRICT
NO. 811, 999 F. Supp. 665 (Dist. of Minn. 1998). PLEASE
NOTE: Judge Doty stated a "BB GUN RIFLE" IS A "DANGEROUS
WEAPON", citing Minn. Stat. §609.66, subd. 1d(a) and
§609.66, subd. 1d(b). Id. at 668 and FootNote 3.

**
BINGO

PAGE 11:

Paragraph 21 (continued):

Minn. Stat. §609.66, subd. 1d(a) and 1d(b);
DANIELS vs. DOWNING, 2003 U.S. Dist. LEXIS 1826 (Dist. of Minn. 2003);
Minneapolis Code of Ordinances §393.150; (BB GUN IS A WEAPON);

BINGO

Paragraph 22:

ADDITIONAL CASE CITES AND QUOTES TO SUPPORT "VOID-FOR-VAGUENESS
DOCTRINE":

LANZETTA vs. NEW JERSEY, 306 U.S. 451, 453 (1939);
CONNALLY vs. GENERAL CONSTRUCTION CO., 269 U.S. 385, 391-393 (1926);
U.S. vs. EVANS, 333 US 483 (1948).

PAGE 12:

FAIR NOTICE - DUE PROCESS CLAUSE:

Paragraph 23:

Minn. Stat. §624.712, Subd. 2. PISTOL;
Minn. Stat. §624.713;

Paragraph 24:

WELTON vs. NIX, 719 F.2d 969 (8th Cir. 1983).

Paragraph 25:

No cite.

PRIOR SUPREME COURT "FAIR NOTICE" PRECEDENT:

Paragraph 26:

BOUIE vs. CITY OF COLUMBIA, 378 US 347, 350-351 (1964);

SEVERAL WAYS A CRIMINAL DEFENDANT CAN BE DENIED "FAIR NOTICE":

Paragraph 27:

KOLENDER vs. LAWSON, 461 US 352 (1983);
CONNALLY vs. GENERAL CONSTR. CO., 269 US 385 (1926);

Paragraph 28:

ROGERS vs. TENNESSEE, 532 US 451, 457-460 (2001);
BOUIE vs. CITY OF COLUMBIA, 378 US 347, 350-51 (1964);

"EXCESSIVE" VAGUENESS:

Paragraph 29:

No cite.

PAGE 13:

Paragraph 30:

Minn. Stat. §624.712, Subd. 2. PISTOL.

WHETHER MINNESOTA STATE STATUTES §624.712 and §624.713 IN THIS ABOVE-ENTITLED CASE AN UNANTICIPATED "JUDICIAL EXPANSION" THAT VIOLATES DUE PROCESS?

PAGE 13: (continued)

Paragraph 31:

BOUIE vs. CITY OF COLUMBIA, 378 US 347, 350-51 (1964);

Paragraph 32:

Cites to BOUIE;

Paragraph 33:

Minn. Stat. **§624.712, Subd. 2 "EXEMPTION"**;
Common meaning of terms: Gun, Pistol, Rifle, Firearm;

PAGE 14:

Paragraph 34:

Minn. Stat. **§624.713 and §624.712**;
Minn. Stat. **§624.712 that CROSS-REFERENCES FEDERAL LAW 18 USC §925**;
18 U.S.C. **§921 et. seq.**;
18 USC **§921(a)(3)**.

Paragraph 35:

Minn. Stat. **§624.712 that refers to 18 USC §925, Paragraph (d)(3)**;
"OR ANY REGULATION ADOPTED PURSUANT TO THAT LAW."

Paragraph 36:

18 USC **§921(a)(3)**;
Minn. Stat. **§624.712**.

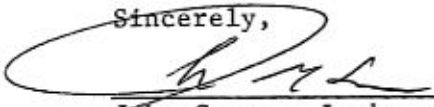
Paragraph 37:

Prosecuting Attorney **ROGER J. FELLOW**, Tel. (612) 348-0817;
Minn. Stat. **§624.713 and §624.712**;

CONCLUSION:

Hopefully the above will assist you in cross-referencing to the **JUNE 23, 2014 LETTER**.

Sincerely,


John Gregory Lambros, JailHouse Lawyer
Reg. No. 00436-124
USP Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Website: www.Lambros.Name

JUNE 23, 2014

TO: ANDREW JEROME BIGBEE
Reg. No. 04727-041

FR: JOHN GREGORY LAMBROS, JailHouse Lawyer
Reg. No. 00436-124
U.S. Penitentiary Leavenworth
P.O. Box 1000
Leavenworth, Kansas 66048-1000
Website: www.Lambros.Name

EXHIBITS

EXHIBITS

EXHIBITS

EXHIBITS

RE: JUNE 23, 2014 LETTER FROM LAMBROS TO BIGBEE AS TO THE QUESTION:

"WHETHER A .177 CALIBER RIFLE PELLET GUN IS A "FIREARM"
WITHIN THE DEFINITION OF MINNESOTA CRIMINAL LAW?"

- EXHIBIT A: OCTOBER 23, 2013, "COMPLAINT", State of Minnesota, County of Hennepin, District Court for the Fourth Judicial District, STATE OF MINNESOTA vs. ANDREW JEROME BIGBEE, City Attorney File No. 13-6580, Track ID. 2689521. OFFENSE: Count 1: Prohibited Person in Possession of a Firearm (FELONY), Minn. Stat. §624.713, SUBD. 1(2), 2(b); §609.11. Penalty 5-15 Years and/or \$30,000.00.
- EXHIBIT B: Minnesota Statute §624.713, Certain Person's Not to Possess Firearms.
- EXHIBIT C: Minnesota Statute §624.712, DEFINITIONS.
- EXHIBIT D: Minnesota Statute §609.11, MINIMUM SENTENCES OF IMPRISONMENT.
- EXHIBIT E: Minnesota Statute §609.66, DANGEROUS WEAPONS.
- EXHIBIT F: STATE OF MINNESOTA vs. DYLAN ARBER NEWMAN, 538 N.W.2d 476 (October 3, 1995)
- EXHIBIT G: Title 18 U.S.C. §925.
- EXHIBIT H: Title 26 U.S.C. §5845, DEFINITIONS.
- EXHIBIT I: Title 18 U.S.C. §921, DEFINITIONS for chapter 18 USC §§921 et seq.
- EXHIBIT J: U.S. Sentencing Commission Guideline Manual, Section 1B1.1.
- EXHIBIT K: 62 L. Ed. 2d 827, RULE OF LENITY, Supreme Court's views as to the "RULE OF LENITY" in the construction of criminal statutes. By Daniel A. Per-Lee, J.D. (Index only) (Annotations)

CCT	LIST CHARGE STATUTE ONLY	MOC	GOC	CTY ATTY FILE NO.	CONTROLLING AGENCY	CONTROL NO
1	624.713	W164R	N	13-6580	MN0271800	13004059

COURT CASE NO. DATE FILED

Amended Tab Charge Previously Filed

If more than 6 counts (see attached) If Domestic Assault as defined by MS 518B01, sub2a,b

<input type="checkbox"/> SERIOUS FELONY	<input type="checkbox"/> SUMMONS
<input checked="" type="checkbox"/> FELONY	<input type="checkbox"/> WARRANT
<input type="checkbox"/> GROSS MISDM DWI	<input checked="" type="checkbox"/> ORDER OF DETENTION
<input type="checkbox"/> GROSS MISDM	<input type="checkbox"/> EXTRADITION

State of Minnesota,

PLAINTIFF,

VS.

NAME: first, middle, last
ANDREW JEROME BIGBEE

Date of Birth	MNCIS #:	27-CR-
3/8/66	LE#:	13-25725
	SILS ID:	40388
	TRACK ID:	2689521

DEFENDANT,

1001 W 76TH ST
RICHFIELD, MN 55423

COMPLAINT

The Complainant, being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the Defendant committed the following offense(s). The complainant states that the following facts establish PROBABLE CAUSE:

Complainant, Rian Jensen, of the Richfield Police Department, has investigated the facts and circumstances of this offense and believes the following establishes probable cause:

On or about October 22, 2013, shortly after 9:13 a.m., Richfield Police Officers responded to a call of a house fire at 1001 W. 76th Street in the City of Richfield, Hennepin County, State of Minnesota. Officers were familiar with that address and the owner from prior contacts at that address. Upon arrival, Officers entered the house with members of the Fire Department. As the Fire Department was looking for the source of the smoke in the building, the Police officers went through the house to make sure no one was inside and to assist in finding the source of the smoke.

When the building had been cleared for occupants, the officers exited the house through the kitchen when they saw a long barrel gun on top of the refrigerator in plain sight. As the officers exited, the resident of the home appeared. The officers confirmed that the resident, ANDREW JEROME BIGBEE (DOB 3/8/1966), the Defendant herein, was a person prohibited from possessing a firearm based on previous felony convictions.

The officers applied for and received a search warrant for the premises and conducted a search. Found during the search was a long barrel air rifle and documentation of the Defendant's residence at that location.

22

COMPLAINT SUPPLEMENT

CCT	SECTION/Subdivision	M.O.C.	GOC

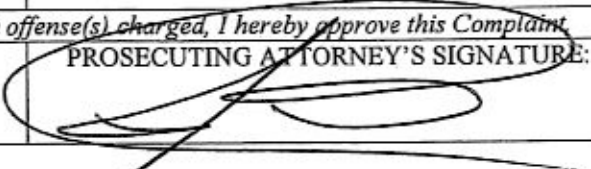
A check of the Defendant's criminal history revealed federal convictions from May 1991 for conspiracy to distribute and possession with intent to distribute cocaine and conspiracy to conduct financial transactions involving the proceeds from distribution of cocaine for which the Defendant is still under supervision.

OFFENSE

COUNT 1: PROHIBITED PERSON IN POSSESSION OF A FIREARM (FELONY)
 MINN. STAT. § 624.713, SUBD. 1(2), 2(b); § 609.11
 PENALTY: 5-15 YEARS AND/OR \$30,000

That on or about October 22, 2013, in Hennepin County, Minnesota, **ANDREW JEROME BIGBEE** possessed a firearm and **ANDREW JEROME BIGBEE** has been convicted or adjudicated delinquent in this state or elsewhere of a crime of violence, for which the sentence or court supervision expired on or after August 1, 1993.

NOTICE: You must appear for every court hearing on this charge. A failure to appear for court on this charge is a criminal offense and may be punished as provided in Minn. Stat. § 609.49.

<p><i>THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release be:</i> 1) <i>arrested or that other lawful steps be taken to obtain defendant's appearance in court; or</i> 2) <i>detained, if already in custody, pending further proceedings;</i> <i>and that said Defendant otherwise be dealt with according to law.</i></p>	
<p>COMPLAINANT'S NAME: Rian Jensen</p>	<p>COMPLAINANT'S SIGNATURE:</p>
<p><i>Being duly authorized to prosecute the offense(s) charged, I hereby approve this Complaint.</i></p>	
<p>DATE: October 23, 2013 vkf</p>	<p>PROSECUTING ATTORNEY'S SIGNATURE:</p> 
<p>PROSECUTING ATTORNEY:</p>	
<p>NAME/TITLE: ROGER J. FELLOWS (146195) Assistant County Attorney</p>	<p>ADDRESS/TELEPHONE: C2100 Government Center, Minneapolis, MN 55487 Telephone: 612-348-0817</p>

23

NAME: _____ SIGNATURE: _____

TITLE: _____

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant(s) arrest or other lawful steps be taken to obtain Defendant(s) appearance in Court, or his detention, if already in custody, pending further proceedings. The Defendant(s) is/are thereof charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT(S), ARE HEREBY SUMMONED to appear on the _____ day of _____, 20____ at _____ AM/PM before the above-named court at _____ to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

WARRANT

EXECUTE IN MINNESOTA ONLY

To the sheriff of the above-named county; or other person authorized to execute this WARRANT; I hereby order, in the name of the State of Minnesota, that the above-named Defendant(s) be apprehended and arrested without delay and brought promptly before the above-named Court (if in session, and if not, before a Judge or Judicial Officer of such Court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon thereafter as such Judge or Judicial Officer is available) to be dealt with according to law.

ORDER OF DETENTION

Since the above-named Defendant(s) is already in custody; I hereby order, subject to bail or conditions of release, that the above-named Defendant(s) continue to be detained pending further proceedings.

Bail: \$100,000.00 + CR

Conditions of Release: No use of drugs/alcohol No possession of weapons; Make all appearances; Remain law abiding

This COMPLAINT- **ORDER OF DETENTION** duly subscribed and sworn to, is issued by the undersigned Judicial Officer this _____ day of _____, 20____.

NAME: _____ SIGNATURE _____

TITLE: **JUDGE OF DISTRICT COURT**

Sworn testimony has been given before the Judicial Officer by the following witnesses:

<p>STATE OF MINNESOTA COUNTY OF HENNEPIN</p> <p>STATE OF MINNESOTA</p> <p>Plaintiff</p> <p>vs.</p> <p>ANDREW JEROME BIGBEE</p> <p>Defendant(s).</p>	<p>Clerk's Signature or File Stamp:</p> <p>RETURN OF SERVICE</p> <p>I hereby Certify and Return that I have served a copy of this COMPLAINT – SUMMONS, WARRANT, ORDER OF DETENTION upon Defendant(s) herein-named.</p> <p>Signature of Authorized Service Agent:</p> <p style="text-align: right;">24.</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

624.713 CERTAIN PERSONS NOT TO POSSESS FIREARMS.

Subdivision 1. **Ineligible persons.** The following persons shall not be entitled to possess a pistol or semiautomatic military-style assault weapon or, except for clause (1), any other firearm:

(1) a person under the age of 18 years except that a person under 18 may carry or possess a pistol or semiautomatic military-style assault weapon (i) in the actual presence or under the direct supervision of the person's parent or guardian, (ii) for the purpose of military drill under the auspices of a legally recognized military organization and under competent supervision, (iii) for the purpose of instruction, competition, or target practice on a firing range approved by the chief of police or county sheriff in whose jurisdiction the range is located and under direct supervision; or (iv) if the person has successfully completed a course designed to teach marksmanship and safety with a pistol or semiautomatic military-style assault weapon and approved by the commissioner of natural resources;

(2) except as otherwise provided in clause (9), a person who has been convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, in this state or elsewhere, a crime of violence. For purposes of this section, crime of violence includes crimes in other states or jurisdictions which would have been crimes of violence as herein defined if they had been committed in this state;

(3) a person who is or has ever been committed in Minnesota or elsewhere by a judicial determination that the person is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02, to a treatment facility, or who has ever been found incompetent to stand trial or not guilty by reason of mental illness, unless the person's ability to possess a firearm has been restored under subdivision 4;

(4) a person who has been convicted in Minnesota or elsewhere of a misdemeanor or gross misdemeanor violation of chapter 152, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other such violation of chapter 152 or a similar law of another state; or a person who is or has ever been committed by a judicial determination for treatment for the habitual use of a controlled substance or marijuana, as defined in sections 152.01 and 152.02, unless the person's ability to possess a firearm has been restored under subdivision 4;

(5) a person who has been committed to a treatment facility in Minnesota or elsewhere by a judicial determination that the person is chemically dependent as defined in section 253B.02, unless the person has completed treatment or the person's ability to possess a firearm has been restored under subdivision 4. Property rights may not be abated but access may be restricted by the courts;

(6) a peace officer who is informally admitted to a treatment facility pursuant to section 253B.04 for chemical dependency, unless the officer possesses a certificate from the head of the treatment facility discharging or provisionally discharging the officer from the treatment facility. Property rights may not be abated but access may be restricted by the courts;

(7) a person, including a person under the jurisdiction of the juvenile court, who has been charged with committing a crime of violence and has been placed in a pretrial diversion program by the court before disposition, until the person has completed the diversion program and the charge of committing the crime of violence has been dismissed;

(8) except as otherwise provided in clause (9), a person who has been convicted in another state of committing an offense similar to the offense described in section 609.224, subdivision 3,

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against a family or household member or section 609.2242, subdivision 3, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of section 609.224, subdivision 3, or 609.2242, subdivision 3, or a similar law of another state;

(9) a person who has been convicted in this state or elsewhere of assaulting a family or household member and who was found by the court to have used a firearm in any way during commission of the assault is prohibited from possessing any type of firearm for the period determined by the sentencing court;

(10) a person who:

(i) has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(ii) is a fugitive from justice as a result of having fled from any state to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding;

(iii) is an unlawful user of any controlled substance as defined in chapter 152;

(iv) has been judicially committed to a treatment facility in Minnesota or elsewhere as a person who is mentally ill, developmentally disabled, or mentally ill and dangerous to the public, as defined in section 253B.02;

(v) is an alien who is illegally or unlawfully in the United States;

(vi) has been discharged from the armed forces of the United States under dishonorable conditions; or

(vii) has renounced the person's citizenship having been a citizen of the United States; or

(11) a person who has been convicted of the following offenses at the gross misdemeanor level, unless three years have elapsed since the date of conviction and, during that time, the person has not been convicted of any other violation of these sections: section 609.229 (crimes committed for the benefit of a gang); 609.2231, subdivision 4 (assaults motivated by bias); 609.255 (false imprisonment); 609.378 (neglect or endangerment of a child); 609.582, subdivision 4 (burglary in the fourth degree); 609.665 (setting a spring gun); 609.71 (riot); or 609.749 (stalking). For purposes of this paragraph, the specified gross misdemeanor convictions include crimes committed in other states or jurisdictions which would have been gross misdemeanors if conviction occurred in this state.

A person who issues a certificate pursuant to this section in good faith is not liable for damages resulting or arising from the actions or misconduct with a firearm committed by the individual who is the subject of the certificate.

The prohibition in this subdivision relating to the possession of firearms other than pistols and semiautomatic military-style assault weapons does not apply retroactively to persons who are prohibited from possessing a pistol or semiautomatic military-style assault weapon under this subdivision before August 1, 1994.

The lifetime prohibition on possessing, receiving, shipping, or transporting firearms for persons convicted or adjudicated delinquent of a crime of violence in clause (2), applies only to offenders who are discharged from sentence or court supervision for a crime of violence on or after August 1, 1993.

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For purposes of this section, "judicial determination" means a court proceeding pursuant to sections 253B.07 to 253B.09 or a comparable law from another state.

Subd. 1a. **Ineligible to receive, ship, transport.** A person presently charged with a crime punishable by imprisonment for a term exceeding one year shall not be entitled to receive, ship, or transport any pistol or semiautomatic military-style assault weapon. A violation of this subdivision is a gross misdemeanor.

Subd. 2. **Penalties.** (a) A person named in subdivision 1, clause (1), who possesses a pistol or semiautomatic military-style assault weapon is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) A person named in subdivision 1, clause (2), who possesses any type of firearm is guilty of a felony and may be sentenced to imprisonment for not more than 15 years or to payment of a fine of not more than \$30,000, or both. This paragraph does not apply to any person who has received a relief of disability under United States Code, title 18, section 925, or whose ability to possess firearms has been restored under section 609.165, subdivision 1d. 

(c) A person named in any other clause of subdivision 1 who possesses any type of firearm is guilty of a gross misdemeanor.

Subd. 3. **Notice.** (a) When a person is convicted of, or adjudicated delinquent or convicted as an extended jurisdiction juvenile for committing, a crime of violence as defined in section 624.712, subdivision 5, the court shall inform the defendant that the defendant is prohibited from possessing a pistol or semiautomatic military-style assault weapon for the remainder of the person's lifetime, and that it is a felony offense to violate this prohibition. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol or semiautomatic military-style assault weapon possession prohibition or the felony penalty to that defendant.

(b) When a person, including a person under the jurisdiction of the juvenile court, is charged with committing a crime of violence and is placed in a pretrial diversion program by the court before disposition, the court shall inform the defendant that: (1) the defendant is prohibited from possessing a pistol or semiautomatic military-style assault weapon until the person has completed the diversion program and the charge of committing a crime of violence has been dismissed; (2) it is a gross misdemeanor offense to violate this prohibition; and (3) if the defendant violates this condition of participation in the diversion program, the charge of committing a crime of violence may be prosecuted. The failure of the court to provide this information to a defendant does not affect the applicability of the pistol or semiautomatic military-style assault weapon possession prohibition or the gross misdemeanor penalty to that defendant.

(c) A court shall notify a person subject to subdivision 1, clause (3), of the prohibitions described in that clause and those described in United States Code, title 18, sections 922(d)(4) and 922(g)(4).

Subd. 4. **Restoration of firearms eligibility to civilly committed person; petition authorized.** (a) A person who is prohibited from possessing a firearm under subdivision 1, due to commitment resulting from a judicial determination that the person is mentally ill, developmentally disabled, mentally ill and dangerous, or chemically dependent, may petition a court to restore the person's ability to possess a firearm.

(b) The court may grant the relief sought in paragraph (a) in accordance with the principles of due process if the circumstances regarding the person's disqualifying condition and the person's record and reputation are determined to be such that:

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- (1) the person is not likely to act in a manner that is dangerous to public safety; and
- (2) the granting of relief would not be contrary to the public interest.

(c) When determining whether a person has met the requirement of paragraph (b), clause (1), the court may consider evidence from a licensed medical doctor or clinical psychologist that the person is no longer suffering from the disease or condition that caused the disability or that the disease or condition has been successfully treated for a period of three consecutive years.

(d) Review on appeal shall be de novo.

Subd. 5. **Provision of firearms background check information.** (a) When a court places a person, including a person under the jurisdiction of the juvenile court, who is charged with committing a crime of violence into a pretrial diversion program before disposition, the court must ensure that information regarding the person's placement in that program and the ordered expiration date of that placement is transmitted as soon as practicable to the National Instant Criminal Background Check System. When a person successfully completes or discontinues the program, the prosecuting attorney must also report that fact within 24 hours of receipt to the National Instant Criminal Background Check System.

(b) The court must report the conviction and duration of the firearms disqualification imposed as soon as practicable to the National Instant Criminal Background Check System when a person is convicted of a gross misdemeanor that disqualifies the person from possessing firearms under the following sections:

- (1) 518B.01, subdivision 14;
- (2) 609.224, subdivision 3;
- (3) 609.2242, subdivision 3;
- (4) 609.749, subdivision 8;
- (5) 624.713, subdivision 1, clause (11); or
- (6) 629.715, subdivision 2.

(c) If the court reports a firearms disqualification based on a charge of violating an offense listed in paragraph (b), the court must provide notice of the disposition of the charge to the National Instant Criminal Background Check System within three business days.


History: 1975 c 378 s 3; 1983 c 269 s 2; 1Sp1985 c 9 art 2 s 98; 1986 c 444; 1991 c 279 s 36; 1992 c 537 s 3; 1993 c 326 art 1 s 27; 1993 c 366 s 11; 1994 c 576 s 55,56; 1994 c 636 art 3 s 27,28; 1995 c 259 art 3 s 21; 1996 c 408 art 4 s 15; 2002 c 221 s 48; 2003 c 28 art 3 s 8-10; 2005 c 56 s 1; 2005 c 83 s 1; 2009 c 139 s 2,3; 2010 c 299 s 14; 2013 c 86 art 4 s 8,9

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624.712 DEFINITIONS.

Subdivision 1. **Scope.** As used in sections 624.711 to 624.717, the terms defined in this section shall have the meanings given them. 

Subd. 2. **Pistol.** "Pistol" includes a weapon designed to be fired by the use of a single hand and with an overall length less than 26 inches, or having a barrel or barrels of a length less than 18 inches in the case of a shotgun or having a barrel of a length less than 16 inches in the case of a rifle (1) from which may be fired or ejected one or more solid projectiles by means of a cartridge or shell or by the action of an explosive or the igniting of flammable or explosive substances; or (2) for which the propelling force is a spring, elastic band, carbon dioxide, air or other gas, or vapor.

"Pistol" does not include a device firing or ejecting a shot measuring .18 of an inch, or less, in diameter and commonly known as a "BB gun," a scuba gun, a stud gun or nail gun used in the construction industry or children's pop guns or toys.  

Subd. 3. **Antique firearm.** "Antique firearm" means any firearm, including any pistol, with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899 and any replica of any firearm described herein if such replica is not designed or redesigned, made or remade, or intended to fire conventional rimfire or conventional centerfire ammunition, or uses conventional rimfire or conventional centerfire ammunition which is not readily available in the ordinary channels of commercial trade.

Subd. 4. **Saturday night special pistol.** "Saturday night special pistol" means a pistol other than an antique firearm or a pistol for which the propelling force is carbon dioxide, air or other vapor, or children's pop guns or toys, having a frame, barrel, cylinder, slide or breechblock:

- (1) of any material having a melting point (liquidus) of less than 1,000 degrees Fahrenheit, or
- (2) of any material having an ultimate tensile strength of less than 55,000 pounds per square inch, or
- (3) of any powdered metal having a density of less than 7.5 grams per cubic centimeter.

Subd. 5. **Crime of violence.** "Crime of violence" means: felony convictions of the following offenses: sections 609.185 (murder in the first degree); 609.19 (murder in the second degree); 609.195 (murder in the third degree); 609.20 (manslaughter in the first degree); 609.205 (manslaughter in the second degree); 609.215 (aiding suicide and aiding attempted suicide); 609.221 (assault in the first degree); 609.222 (assault in the second degree); 609.223 (assault in the third degree); 609.2231 (assault in the fourth degree); 609.229 (crimes committed for the benefit of a gang); 609.235 (use of drugs to injure or facilitate crime); 609.24 (simple robbery); 609.245 (aggravated robbery); 609.25 (kidnapping); 609.255 (false imprisonment); 609.322 (solicitation, inducement, and promotion of prostitution; sex trafficking); 609.342 (criminal sexual conduct in the first degree); 609.343 (criminal sexual conduct in the second degree); 609.344 (criminal sexual conduct in the third degree); 609.345 (criminal sexual conduct in the fourth degree); 609.377 (malicious punishment of a child); 609.378 (neglect or endangerment of a child); 609.486 (commission of crime while wearing or possessing a bullet-resistant vest); 609.52 (involving theft of a firearm, theft involving the intentional taking or driving of a motor vehicle without the consent of the owner or authorized agent of the owner, theft involving the taking of property from a burning, abandoned, or vacant building, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle, and theft involving the theft of a controlled substance, an explosive, or an incendiary device); 609.561 (arson in the first degree); 609.562 (arson in the second degree); 609.582, subdivision 1, 2, or 3 (burglary in the first through third

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degrees); 609.66, subdivision 1c (drive-by shooting); 609.67 (unlawfully owning, possessing, operating a machine gun or short-barreled shotgun); 609.71 (riot); 609.713 (terroristic threats); 609.749 (stalking); 609.855, subdivision 5 (shooting at a public transit vehicle or facility); and chapter 152 (drugs, controlled substances); and an attempt to commit any of these offenses.

Subd. 6. **Transfer.** "Transfer" means a sale, gift, loan, assignment or other delivery to another, whether or not for consideration, of a pistol or semiautomatic military-style assault weapon or the frame or receiver of a pistol or semiautomatic military-style assault weapon.

Subd. 7. **Semiautomatic military-style assault weapon.** "Semiautomatic military-style assault weapon" means:

(1) any of the following firearms:

- (i) Avtomat Kalashnikov (AK-47) semiautomatic rifle type;
- (ii) Beretta AR-70 and BM-59 semiautomatic rifle types;
- (iii) Colt AR-15 semiautomatic rifle type;
- (iv) Daewoo Max-1 and Max-2 semiautomatic rifle types;
- (v) Famas MAS semiautomatic rifle type;
- (vi) Fabrique Nationale FN-LAR and FN-FNC semiautomatic rifle types;
- (vii) Galil semiautomatic rifle type;
- (viii) Heckler & Koch HK-91, HK-93, and HK-94 semiautomatic rifle types;
- (ix) Ingram MAC-10 and MAC-11 semiautomatic pistol and carbine types;
- (x) Intratec TEC-9 semiautomatic pistol type;
- (xi) Sigarms SIG 550SP and SIG 551SP semiautomatic rifle types;
- (xii) SKS with detachable magazine semiautomatic rifle type;
- (xiii) Steyr AUG semiautomatic rifle type;
- (xiv) Street Sweeper and Striker-12 revolving-cylinder shotgun types;
- (xv) USAS-12 semiautomatic shotgun type;
- (xvi) Uzi semiautomatic pistol and carbine types; or
- (xvii) Valmet M76 and M78 semiautomatic rifle types;

(2) any firearm that is another model made by the same manufacturer as one of the firearms listed in clause (1), and has the same action design as one of the listed firearms, and is a redesigned, renamed, or renumbered version of one of the firearms listed in clause (1), or has a slight modification or enhancement, including but not limited to a folding or retractable stock; adjustable sight; case deflector for left-handed shooters; shorter barrel; wooden, plastic, or metal stock; larger clip size; different caliber; or a bayonet mount; and

(3) any firearm that has been manufactured or sold by another company under a licensing agreement with a manufacturer of one of the firearms listed in clause (1) entered into after the effective date of Laws 1993, chapter 326, to manufacture or sell firearms that are identical or nearly identical to those listed in clause (1), or described in clause (2), regardless of the company of production or country of origin.

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The weapons listed in clause (1), except those listed in items (iii), (ix), (x), (xiv), and (xv), are the weapons the importation of which was barred by the Bureau of Alcohol, Tobacco, and Firearms of the United States Department of the Treasury in July 1989.

Except as otherwise specifically provided in paragraph (d), a firearm is not a "semiautomatic military-style assault weapon" if it is generally recognized as particularly suitable for or readily adaptable to sporting purposes under United States Code, title 18, section 925, paragraph (d)(3), or any regulations adopted pursuant to that law.



Subd. 8. **Included weapons.** By August 1, 1993, and annually thereafter, the superintendent of the Bureau of Criminal Apprehension shall publish a current authoritative list of the firearms included within the definition of "semiautomatic military-style assault weapon" under this section. Dealers, purchasers, and other persons may rely on the list in complying with this chapter.

Subd. 9. **Business day.** "Business day" means a day on which state offices are open for normal business and excludes weekends and legal holidays.

Subd. 10. **Crime punishable by imprisonment for a term exceeding one year.** "Crime punishable by imprisonment for a term exceeding one year" does not include:

(1) any federal or state offense pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices; or

(2) any state offense classified by the laws of this state or any other state as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside, or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this definition, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

Subd. 11. **Commissioner.** "Commissioner" means the commissioner of public safety unless otherwise indicated.

History: 1975 c 378 s 2; 1977 c 349 s 2; 1987 c 276 s 3; 1991 c 279 s 35; 1993 c 326 art 1 s 23-26; 1994 c 636 art 3 s 24-26; 1995 c 226 art 2 s 32; 1996 c 408 art 4 s 14; 2003 c 28 art 2 s 3; art 3 s 7; 2005 c 83 s 1; 2009 c 137 s 11; ~~2010~~ c 299 s 14

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609.11 MINIMUM SENTENCES OF IMPRISONMENT.

Subdivision 1. **Commitments without minimums.** All commitments to the commissioner of corrections for imprisonment of the defendant are without minimum terms except when the sentence is to life imprisonment as required by law and except as otherwise provided in this chapter.

Subd. 2. [Repealed, 1978 c 723 art 2 s 5]

Subd. 3. [Repealed, 1981 c 227 s 13]

Subd. 4. **Dangerous weapon.** Any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, used, whether by brandishing, displaying, threatening with, or otherwise employing, a dangerous weapon other than a firearm, shall be committed to the commissioner of corrections for not less than one year plus one day, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, used a dangerous weapon other than a firearm, shall be committed to the commissioner of corrections for not less than three years nor more than the maximum sentence provided by law.

Subd. 5. **Firearm.** (a) Except as otherwise provided in paragraph (b), any defendant convicted of an offense listed in subdivision 9 in which the defendant or an accomplice, at the time of the offense, had in possession or used, whether by brandishing, displaying, threatening with, or otherwise employing, a firearm, shall be committed to the commissioner of corrections for not less than three years, nor more than the maximum sentence provided by law. Any defendant convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of the offense, had in possession or used a firearm shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.

(b) Any defendant convicted of violating section 609.165 or 624.713, subdivision 1, clause (2), shall be committed to the commissioner of corrections for not less than five years, nor more than the maximum sentence provided by law.

Subd. 5a. **Drug offenses.** Notwithstanding section 609.035, whenever a defendant is subject to a mandatory minimum sentence for a felony violation of chapter 152 and is also subject to this section, the minimum sentence imposed under this section shall be consecutive to that imposed under chapter 152.

Subd. 6. **No early release.** Any defendant convicted and sentenced as required by this section is not eligible for probation, parole, discharge, or supervised release until that person has served the full term of imprisonment as provided by law, notwithstanding the provisions of sections 242.19, 243.05, 244.04, 609.12 and 609.135.

Subd. 7. **Fact finder shall establish.** The question of whether the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm shall be determined by the fact finder at the time of a verdict or finding of guilt at trial or the entry of a plea of guilty based upon the record of the trial or the plea of guilty. The fact finder shall also determine whether the defendant has been convicted of a second or subsequent offense in which the defendant or an accomplice, at the time of commission of an offense listed in subdivision 9, used a firearm or other dangerous weapon or had in possession a firearm.

Subd. 8. **Motion by prosecutor.** (a) Except as otherwise provided in paragraph (b), prior to the time of sentencing, the prosecutor may file a motion to have the defendant sentenced

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without regard to the mandatory minimum sentences established by this section. The motion shall be accompanied by a statement on the record of the reasons for it. When presented with the motion, or on its own motion, the court may sentence the defendant without regard to the mandatory minimum sentences established by this section if the court finds substantial and compelling reasons to do so. A sentence imposed under this subdivision is a departure from the Sentencing Guidelines.

(b) The court may not, on its own motion or the prosecutor's motion, sentence a defendant without regard to the mandatory minimum sentences established by this section if the defendant previously has been convicted of an offense listed in subdivision 9 in which the defendant used or possessed a firearm or other dangerous weapon.

Subd. 9. Applicable offenses. The crimes for which mandatory minimum sentences shall be served as provided in this section are: murder in the first, second, or third degree; assault in the first, second, or third degree; burglary; kidnapping; false imprisonment; manslaughter in the first or second degree; aggravated robbery; simple robbery; first-degree or aggravated first-degree witness tampering; criminal sexual conduct under the circumstances described in sections 609.342, subdivision 1, clauses (a) to (f); 609.343, subdivision 1, clauses (a) to (f); and 609.344, subdivision 1, clauses (a) to (e) and (h) to (j); escape from custody; arson in the first, second, or third degree; drive-by shooting under section 609.66, subdivision 1e; stalking under section 609.749, subdivision 3, clause (3); possession or other unlawful use of a firearm in violation of section 609.165, subdivision 1b, or 624.713, subdivision 1, clause (2), a felony violation of chapter 152; or any attempt to commit any of these offenses.

Subd. 10. Report on criminal cases involving firearm. Beginning on July 1, 1994, every county attorney shall collect and maintain the following information on criminal complaints and prosecutions within the county attorney's office in which the defendant is alleged to have committed an offense listed in subdivision 9 while possessing or using a firearm:

- (1) whether the case was charged or dismissed;
- (2) whether the defendant was convicted of the offense or a lesser offense; and
- (3) whether the mandatory minimum sentence required under this section was imposed and executed or was waived by the prosecutor or court.

No later than July 1 of each year, beginning on July 1, 1995, the county attorney shall forward this information to the Sentencing Guidelines commission upon forms prescribed by the commission.

History: 1963 c 753 art 1 s 609.11; 1969 c 743 s 1; 1971 c 845 s 15; 1974 c 32 s 1; 1975 c 378 s 8; 1977 c 130 s 2; 1978 c 723 art 2 s 2; 1979 c 258 s 1; 1981 c 227 s 1-7; 1983 c 274 s 15; 1986 c 351 s 5; 1989 c 290 art 3 s 27,28; 1991 c 279 s 25; 1993 c 326 art 13 s 23; 1994 c 576 s 46; 1994 c 636 art 3 s 5-8; 1996 c 408 art 4 s 4,5; 1997 c 96 s 4; 1998 c 367 art 2 s 4,5; 2006 c 260 art 1 s 13; 2010 c 299 s 14

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609.66 DANGEROUS WEAPONS.

Subdivision 1. Misdemeanor and gross misdemeanor crimes. (a) Whoever does any of the following is guilty of a crime and may be sentenced as provided in paragraph (b):

- (1) recklessly handles or uses a gun or other dangerous weapon or explosive so as to endanger the safety of another; or
- (2) intentionally points a gun of any kind, capable of injuring or killing a human being and whether loaded or unloaded, at or toward another; or
- (3) manufactures or sells for any unlawful purpose any weapon known as a slungshot or sand club; or
- (4) manufactures, transfers, or possesses metal knuckles or a switch blade knife opening automatically; or
- (5) possesses any other dangerous article or substance for the purpose of being used unlawfully as a weapon against another; or
- (6) outside of a municipality and without the parent's or guardian's consent, furnishes a child under 14 years of age, or as a parent or guardian permits the child to handle or use, outside of the parent's or guardian's presence, a firearm or airgun of any kind, or any ammunition or explosive.

Possession of written evidence of prior consent signed by the minor's parent or guardian is a complete defense to a charge under clause (6).

(b) A person convicted under paragraph (a) may be sentenced as follows:

- (1) if the act was committed in a public housing zone, as defined in section 152.01, subdivision 19, a school zone, as defined in section 152.01, subdivision 14a, or a park zone, as defined in section 152.01, subdivision 12a, to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both; or
- (2) otherwise, including where the act was committed on residential premises within a zone described in clause (1) if the offender was at the time an owner, tenant, or invitee for a lawful purpose with respect to those residential premises, to imprisonment for not more than 90 days or to payment of a fine of not more than \$1,000, or both.

Subd. 1a. Felony crimes; silencers prohibited; reckless discharge. (a) Except as otherwise provided in subdivision 1h, whoever does any of the following is guilty of a felony and may be sentenced as provided in paragraph (b):

- (1) sells or has in possession any device designed to silence or muffle the discharge of a firearm;
- (2) intentionally discharges a firearm under circumstances that endanger the safety of another; or
- (3) recklessly discharges a firearm within a municipality.

(b) A person convicted under paragraph (a) may be sentenced as follows:

- (1) if the act was a violation of paragraph (a), clause (2), or if the act was a violation of paragraph (a), clause (1) or (3), and was committed in a public housing zone, as defined in section 152.01, subdivision 19, a school zone, as defined in section 152.01, subdivision 14a, or a park zone, as defined in section 152.01, subdivision 12a, to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both; or
- (2) otherwise, to imprisonment for not more than two years or to payment of a fine of not more than \$5,000, or both.

Subd. 1b. Felony; furnishing to minors. Whoever, in any municipality of this state, furnishes a minor under 18 years of age with a firearm, airgun, ammunition, or explosive without the prior consent of the minor's parent or guardian or of the police department of the municipality is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both. Possession of written evidence of prior consent signed by the minor's parent or guardian is a complete defense to a charge under this subdivision.

Subd. 1c. Felony; furnishing dangerous weapon. Whoever recklessly furnishes a person with a dangerous weapon in conscious disregard of a known substantial risk that the object will be possessed or used in furtherance of a felony crime of violence is guilty of a felony and may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

Subd. 1d. Possession on school property; penalty. (a) Except as provided under paragraphs (d) and (f), whoever possesses, stores, or keeps a dangerous weapon while knowingly on school property is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

(b) Whoever uses or brandishes a replica firearm or a BB gun while knowingly on school property is guilty of a gross misdemeanor.

(c) Whoever possesses, stores, or keeps a replica firearm or a BB gun while knowingly on school property is guilty of a misdemeanor.

(d) Notwithstanding paragraph (a), (b), or (c), it is a misdemeanor for a person authorized to carry a firearm under the provisions of a permit or otherwise to carry a firearm on or about the person's clothes or person in a location the person knows is school property. Notwithstanding section 609.531, a firearm carried in violation of this paragraph is not subject to forfeiture.

(e) As used in this subdivision:

- (1) "BB gun" means a device that fires or ejects a shot measuring .18 of an inch or less in diameter;

- (2) "dangerous weapon" has the meaning given it in section 609.02, subdivision 6; ←
- (3) "replica firearm" has the meaning given it in section 609.713; and
- (4) "school property" means:
- (i) a public or private elementary, middle, or secondary school building and its improved grounds, whether leased or owned by the school;
 - (ii) a child care center licensed under chapter 245A during the period children are present and participating in a child care program;
 - (iii) the area within a school bus when that bus is being used by a school to transport one or more elementary, middle, or secondary school students to and from school-related activities, including curricular, cocurricular, noncurricular, extracurricular, and supplementary activities; and
 - (iv) that portion of a building or facility under the temporary, exclusive control of a public or private school, a school district, or an association of such entities where conspicuous signs are prominently posted at each entrance that give actual notice to persons of the school-related use.

(f) This subdivision does not apply to:

- (1) active licensed peace officers;
 - (2) military personnel or students participating in military training, who are on-duty, performing official duties;
 - (3) persons authorized to carry a pistol under section 624.714 while in a motor vehicle or outside of a motor vehicle to directly place a firearm in, or retrieve it from, the trunk or rear area of the vehicle;
 - (4) persons who keep or store in a motor vehicle pistols in accordance with section 624.714 or 624.715 or other firearms in accordance with section 97B.045;
 - (5) firearm safety or marksmanship courses or activities conducted on school property;
 - (6) possession of dangerous weapons, BB guns, or replica firearms by a ceremonial color guard;
 - (7) a gun or knife show held on school property;
 - (8) possession of dangerous weapons, BB guns, or replica firearms with written permission of the principal or other person having general control and supervision of the school or the director of a child care center; or
 - (9) persons who are on unimproved property owned or leased by a child care center, school, or school district unless the person knows that a student is currently present on the land for a school-related activity.
- (g) Notwithstanding section 471.634, a school district or other entity composed exclusively of school districts may not regulate firearms, ammunition, or their respective components, when possessed or carried by nonstudents or nonemployees, in a manner that is inconsistent with this subdivision.

Subd. 1e. Felony; drive-by shooting. (a) Whoever, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward another motor vehicle or a building is guilty of a felony and may be sentenced to imprisonment for not more than three years or to payment of a fine of not more than \$6,000, or both.

(b) Any person who violates this subdivision by firing at or toward a person, or an occupied building or motor vehicle, may be sentenced to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both.

(c) For purposes of this subdivision, "motor vehicle" has the meaning given in section 609.52, subdivision 1, and "building" has the meaning given in section 609.581, subdivision 2.

Subd. 1f. Gross misdemeanor; transferring firearm without background check. A person, other than a federally licensed firearms dealer, who transfers a pistol or semiautomatic military-style assault weapon to another without complying with the transfer requirements of section 624.7132, is guilty of a gross misdemeanor if the transferee possesses or uses the weapon within one year after the transfer in furtherance of a felony crime of violence, and if:

- (1) the transferee was prohibited from possessing the weapon under section 624.713 at the time of the transfer; or
- (2) it was reasonably foreseeable at the time of the transfer that the transferee was likely to use or possess the weapon in furtherance of a felony crime of violence.

Subd. 1g. Felony; possession in courthouse or certain state buildings. (a) A person who commits either of the following acts is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both:

- (1) possesses a dangerous weapon, ammunition, or explosives within any courthouse complex; or
- (2) possesses a dangerous weapon, ammunition, or explosives in any state building within the Capitol Area described in chapter 15B, other than the National Guard Armory.

(b) Unless a person is otherwise prohibited or restricted by other law to possess a dangerous weapon, this subdivision does not apply to:

- (1) licensed peace officers or military personnel who are performing official duties;
- (2) persons who carry pistols according to the terms of a permit issued under section 624.714 and who so notify the sheriff or the commissioner of public safety, as appropriate;
- (3) persons who possess dangerous weapons for the purpose of display as demonstrative evidence during testimony at a trial or hearing or exhibition in compliance with advance notice and safety guidelines set by the sheriff or the commissioner of public safety; or
- (4) persons who possess dangerous weapons in a courthouse complex with the express consent of the county sheriff or who

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TRU [REDACTED]

possess dangerous weapons in a state building with the express consent of the commissioner of public safety.
Subd. 1h. Silencers; authorized for law enforcement and wildlife control purposes. (a) Notwithstanding subdivision 1a, paragraph (a), clause (1), licensed peace officers may use devices designed to silence or muffle the discharge of a firearm for tactical emergency response operations. Tactical emergency response operations include execution of high risk search and arrest warrants, incidents of terrorism, hostage rescue, and any other tactical deployments involving high risk circumstances. The chief law enforcement officer of a law enforcement agency that has the need to use silencing devices must establish and enforce a written policy governing the use of the devices.

(b) Notwithstanding subdivision 1a, paragraph (a), clause (1), an enforcement officer, as defined in section 97A.015, subdivision 18, a wildlife area manager, an employee designated under section 84.0835, or a person acting under contract with the commissioner of natural resources, at specific times and locations that are authorized by the commissioner of natural resources may use devices designed to silence or muffle the discharge of a firearm for wildlife control operations that require stealth. If the commissioner determines that the use of silencing devices is necessary under this paragraph, the commissioner must establish and enforce a written policy governing the use, possession, and transportation of the devices.

TRU [REDACTED]

[REDACTED]

(c) Notwithstanding subdivision 1a, paragraph (a), clause (1), a person who is licensed by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives under United States Code, title 18, section 923, as a firearms importer, manufacturer, or dealer, who is acting in full compliance with all federal requirements under that license, may possess devices designed to silence or muffle the discharge of a firearm for the purpose of selling or otherwise transferring in any lawful manner the devices or firearms tested with the devices, to:

- (1) the chief administrator of any federal, state, or local governmental agency;
- (2) the commander or commander's designee of any unit of the United States Armed Forces; or
- (3) a person who is licensed by the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, under United States Code, title 18, section 923, as a firearms importer, manufacturer, or dealer, who is acting in full compliance with all federal requirements under that license.

Subd. 2. Exceptions. Nothing in this section prohibits the possession of the articles mentioned by museums or collectors of art or for other lawful purposes of public exhibition.

History: 1963 c 753 art 1 s 609.66; 1971 c 23 s 66; 1983 c 359 s 89; 1986 c 444; 1990 c 439 s 3,4; 1991 c 279 s 33; 1993 c 326 art 1 s 15-17; 1994 c 576 s 49; 1994 c 636 art 3 s 18-21; 1995 c 186 s 101; 1996 c 408 art 4 s 10; 1998 c 367 art 2 s 22; 2003 c 17 s 2; 2003 c 28 art 2 s 2; 1Sp2003 c 2 art 8 s 10,11; 2004 c 228 art 1 s 72; 2005 c 83 s 1,2; 2005 c 102 s 2; 2010 c 268 s 1; 1Sp2011 c 2 art 4 s 28; 2012 c 194 s 1

A [REDACTED]
W [REDACTED] please copy to the end so I get the history. Thanks
[REDACTED]

36.

[REDACTED]

[REDACTED]...STATE of Minnesota, Respondent,

v.
Dylan Arber NEWMAN, Appellant.
Court of Appeals of Minnesota.
October 3, 1995.
Review Denied November 30, 1995.

Hubert H. Humphrey, III, Minnesota Attorney General, Robert A. Stanich, Assistant Attorney General, St. Paul, Alan L. Mitchell, St. Louis County Attorney, Duluth, MN, for respondent State of Minnesota.

John M. Stuart, Minnesota State Public Defender, Michael A. Herold, Special Assistant State Public Defender, Minneapolis, MN, for appellant Dylan Arber Newman.

Considered and decided by RANDALL, P.J., and DAVIES and HOLTAN, JJ.

OPINION
HARVEY A. HOLTAN, Judge.

Appellant challenges his conviction of a felony drive-by shooting, arguing that the BB gun he shot at another vehicle is not a firearm within the meaning of Minn.Stat. § 609.66, subd. 1e(a) (Supp.1993). We affirm.

FACTS

Appellant Dylan Arber Newman was charged with violating the drive-by shooting statute after admitting he shot his BB gun at a Ford on the highway. The driver of the Ford immediately reported the incident to the officer who had stopped appellant's vehicle for a speeding violation. When the officer asked appellant (a passenger) if he had engaged in the shooting, appellant admitted his conduct and showed the officer the gun in the back seat. The officer found a Crossman 760 Pump Master, .177 caliber pellet BB

[538 N.W.2d 477]

repeater. Appellant said he fired the gun at the Ford because he was bored.

At the omnibus hearing, appellant moved to dismiss the charges for lack of probable cause, asserting that the BB gun was not a firearm under the felony drive-by shooting statute. The court denied the motion and ruled that the BB gun was a firearm within the meaning of that statute, Minn.Stat. § 609.66, subd. 1e(a) (Supp.1993).

After a trial on stipulated facts, the court found appellant guilty as charged. The court stayed imposition of sentence, placed appellant on three years supervised probation, and ordered him to pay a \$3,000 fine and \$285 in restitution to the victim.

ISSUE

Did the trial court err when it determined that a BB gun is a firearm under the felony drive-by shooting statute?

ANALYSIS

Appellant challenges the district court's interpretation of Minn.Stat. § 609.66, subd. 1e(a) (Supp.1993). Statutory interpretation is a question of law that this court reviews de novo. *Sorenson v. St. Paul Ramsey Medical Ctr.*, 457 N.W.2d 188, 190 (Minn. 1990). This case raises an issue of first impression: whether a BB gun is a firearm within the meaning of the drive-by shooting statute, Minn.Stat. § 609.66, subd. 1e(a). That statute provides:

Whoever, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward a person, another motor vehicle, or a building is guilty of a felony * * *.

Id. As a fundamental rule of statutory interpretation, this court should "look first to the specific statutory language and be guided by its natural and most obvious meaning." *Heaslip v. Freeman*, 511 N.W.2d 21, 22 (Minn.App.1994), review denied (Minn. Feb. 24, 1994); see also Minn.Stat. § 645.16 (1992) (when words of statute are clear and free from ambiguity, court shall not disregard the letter of the law).

Section 609.66 is entitled "Dangerous Weapons," but does not define that term or the term "firearm" as used in that section. In fact, at the time of the offense, the criminal code did not contain anywhere a definition for the term "firearm" (although a definition was subsequently added for a single section).¹ The criminal code defines a BB gun as "a device that fires or ejects a shot measuring .18 of an inch or less in diameter." Minn.Stat. § 609.66, subd. 1d(c)(1) (Supp. 1995). Section 609.66 now contains a cross-reference to the game and fish laws located in Minn.Stat. ch. 97A. That chapter defines the term "firearm" as "a gun that discharges shot or a projectile by means of an explosive, a gas, or compressed air." Minn.Stat. § 97A.015, subd. 19 (1992). Thus, under the game and fish laws' definition, a BB gun is a "firearm."

We can rely on that definition only if it does not conflict with the criminal statute, Minn.Stat. § 609.66. See Minn.Stat. § 97A.021, subd. 1 (1992) ("provision of the game and fish laws that is inconsistent with the code of criminal procedure or of penal law is only effective under the game and fish laws"). We see no inconsistency here, because section 609.66 contains no definition of "firearm."

This case is not the first time an appellate court has relied upon section 97A.015's definition of firearm in a criminal appeal. See *State v. Seifert*, 256 N.W.2d 87, 88 (Minn. 1977) (court relied on game and fish laws' definition when determining that BB gun

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used in aggravated robbery was dangerous weapon). Seifert had used a Crossman .177-caliber [538 N.W.2d 478]

CO 2 BB pistol, similar to appellant's weapon, at the time of the offense. The supreme court rejected Seifert's attempt to distinguish his BB gun from other firearms, saying:

In our opinion, the fact that the gun defendant used required gas rather than gunpowder to discharge its projectile does not mean, as defendant contends, that the gun could not be a firearm within the meaning of the term "firearm" used in § 609.02. Having statutory purpose in mind, we think that term should be defined broadly to include guns using newer types of projectile propellants and should not be restricted in meaning to guns using gunpowder. In this respect we note that § 97.40, subd. 34 [now Minn.Stat. § 97A.015, subd. 19], defines "firearms" for purposes of game and fish laws as "any gun from which shot or a projectile is discharged by means of an explosive, gas, or compressed air." The gun used by defendant might also qualify as a dangerous weapon under the alternative test contained in § 609.02 ("any device designed as a weapon and capable of producing death or great bodily harm").

Id. (emphasis added).

Even after the supreme court ruled that a BB gun could be a firearm under the aggravated robbery and mandatory minimum sentence statutes, the legislature has reenacted the criminal statutes without giving "firearm" another definition and, thus, has presumptively adopted the supreme court's definition. See Minn.Stat. § 645.17(4) (1992) (when a court of last resort has interpreted a statute, the legislature in subsequent laws on the same subject matter intends the same interpretation to be used); Western Union Tel. Co. v. Spaeth, 232 Minn. 128, 132, 44 N.W.2d 440, 442 (1950) ("reenactment of a statute without change, after construction * * * by the court, presumptively constitutes an adoption of such construction").

We note further that, from a public policy standpoint, especially when dealing with crimes against persons, it probably would not matter to the victim of a drive-by shooting whether the weapon used in the attack was powered by air or by an explosive. Under most circumstances, the physical or psychological harm will be the same.

Given the supreme court's willingness to rely on the game and fish laws' definition of "firearm," and because section 609.66 is not inconsistent with that definition, we conclude that the definition in section 97A.015 is adequate for purposes of the drive-by shooting statute, Minn.Stat. § 609.66, subd. 1e(a).

DECISION

TRIALING [REDACTED]

[REDACTED]

The trial court properly concluded that a BB gun is a firearm within the meaning of Minn.Stat. § 609.66, subd. 1e(a). Appellant's conviction must stand.

Affirmed.
DAVIES, Judge (dissenting).
I respectfully dissent.

Dylan Arber Newman was convicted of violating the drive-by shooting statute, which requires use of a "firearm" (not a "dangerous weapon"):

Whoever, while in or having just exited from a motor vehicle, recklessly discharges a firearm at or toward a person, another motor vehicle, or a building is guilty of a felony * * *.

Minn.Stat. § 609.66, subd. 1e(a) (Supp.1993) (emphasis added).

In the American Heritage Dictionary, 684 (3d ed. 1992), a "firearm" is defined as [a] weapon, especially a pistol or rifle, capable of firing a projectile and using an explosive charge as a propellant.

(Emphasis added.) That definition excludes guns that use compressed air or gas, not explosive powder, as the propellant. The weapon here is a compressed gas gun, a "glorified" BB gun.

The majority cites State v. Seifert, 256 N.W.2d 87, 88 (Minn.1977), to support its decision. The issue in Seifert, though, was not whether a BB gun is a "firearm," but whether it could be considered a "dangerous weapon" for purposes of the aggravated robbery

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statute, Minn.Stat. § 609.245 (1974). Id. at 88. A "dangerous weapon" was defined at the time as any firearm, * * * or any device designed as a weapon and capable of producing death or great bodily harm, or any other device or instrumentality which, in the manner it is used or intended to be used, is calculated or likely to produce death or great bodily harm.

Minn.Stat. 609.02, subd. 6 (1974).¹ As the supreme court noted in Seifert, under this definition a BB gun "might also qualify" even if it is not a firearm. Id. Indeed, Seifert further stated that the aggravated robbery conviction could be affirmed "[i]n any event" because the defendant had admitted at a change-of-plea hearing that he believed his accomplice had used a (real) firearm. Id. In short, contrary to the majority's suggestion, Seifert does not so clearly hold that a BB gun is a firearm.

I have no trouble with the proposition that a BB gun is a "dangerous weapon" for all of Minn.Stat. ch. 609, our criminal code. But I cannot hold that a BB gun is a "firearm" so as to bring one under the drive-by shooting statute. Criminal statutes are to be interpreted strictly against the state. State v. Soto, 378 N.W.2d 625, 627-28 (Minn.1985). Therefore, the definition of firearm must in this criminal prosecution be read literally.

The conviction should be reversed.

FOOTNOTES

* Retired Judge of the District Court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

1. The Minnesota Legislature has recently enacted a new section, entitled "Civil Disorder," which prohibits training others or demonstrating to others "how to use or make any firearm, or explosive or incendiary device capable of causing injury or death." 1995 Minn.Laws ch. 244, § 23 (setting forth Minn.Stat. § 609.669, subd. 1). The legislature defines the term "firearm," for purposes of this new section only, as

any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive; or the frame or receiver of any such weapon.

Id. (setting forth Minn.Stat. § 609.669, subd. 2(2)). This statute took effect August 1, 1995 and applies to crimes committed on or after that date. 1995 Minn.Laws ch. 244, § 43.

1. The 1993 version of this provision, applicable here, is nearly identical' simply adding "combustible or flammable liquid[s]" as "dangerous weapons." Minn.Stat. § 609.02, subd. 6 (Supp. 1993).

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2005 - Good Law

18 USCS § 925

FIREARMS

771 and affd without op (1980, CA3 Pa) 639 F2d 777.

In forfeiture case burden is upon government to prove essential facts which work forfeiture, and burden is met if facts justifying forfeiture are established by preponderance of evidence. *United States v 1922 Assorted Firearms, etc.* (1971, ED Mo) 330 F Supp 635.

273. Return of firearms

Forfeiture proceeding under 18 USCS § 924 is remedial in nature and properly characterized as civil proceeding; appellant's acquittal on criminal charges under 18 USCS § 922 does not entitle him to return of firearms that were subject of forfeiture proceeding, even if such firearms formed basis of criminal prosecution, as collateral estoppel doctrine does not apply due to difference in burden of proof in criminal case and civil proceeding. *Glup v United States* (1975, CA8 Neb) 523 F2d 557.

Defendant was not entitled to return of firearms, accessories, and ammunition forfeited to government under 18 USCS § 3665 after reversal of his conviction under 18 USCS § 924(c), since reversal of such conviction alone did not establish invalidity of forfeiture order. *United States v Benson* (1999, CA8 Iowa) 184 F3d 936.

18 USCS § 924 did not confer jurisdiction upon the court to remit seized assortment of firearms and ammunition for "mitigating circumstances", and the court could only order them forfeited under 18 USCS § 924. *United States v One Assortment of Firearms & Ammunition* (1970, ED Tenn) 313 F Supp 1056.

An individual who, prior to the seizure of guns, had been convicted of a felony but who, prior to the actual declaration of forfeiture of the guns, had received a "full" pardon from the executive of the state under whose laws he was convicted, is entitled to have those guns returned, even though the pardon did not specifically authorize him to have guns. *United States v One Lot Eighteen Firearms* (1971, DC NH) 325 F Supp 1326.

Court will not direct U.S. to return seized rifles to their purported owner under 18 USCS § 924(d)(1),

based on motion by felon, where rifles were seized as part of unsuccessful criminal prosecution of felon under 18 USCS § 922, because felon is not proper moving party under § 924 since he was acquitted of having possession of rifles and therefore has no relevant interest in their disposition. *United States v Leader* (1992, ED Pa) 809 F Supp 18.

274. Miscellaneous

Defendant's contention that firearms were not subject to seizure under 18 USCS § 924 in that he was not convicted felon within meaning of 18 USCS Appx § 1202 is without merit since State law under which he was convicted contained 5 year maximum sentence, which exceeds term of imprisonment necessary to constitute felony under federal law. *United States v Two Revolvers & One Shotgun* (1970, WD Wash) 313 F Supp 216.

Acquittal on charge of having violated 18 USCS § 922 which makes it unlawful for any person except licensed dealer to engage in business of dealing in firearms or ammunition, is not a bar to civil administrative action by government for forfeiture of such weapons and ammunition arising out of same facts on which criminal proceeding was based. *Epps v Bureau of Alcohol, Tobacco & Firearms* (1973, ED Tenn) 375 F Supp 345, affd without op (1974, CA6 Tenn) 495 F2d 1373.

Forfeiture of firearms was not to be ordered where it was not established that firearms were bought, sold or used to facilitate purchase or sale of firearms in violation of 18 USCS § 922. *United States v Pereira* (1978, ED NY) 463 F Supp 481.

Claimants in civil forfeiture action are not awarded attorney's fees for work counsel performed on criminal case in which claimant was charged with violations of 18 USCS §§ 922 and 924, where forfeiture action was dismissed for lack of subject-matter jurisdiction and all but one criminal charge was dismissed, because 18 USCS § 924(d)(2)(A) does not authorize award of attorney's fees incurred in related criminal case because criminal case is not "action or proceeding for return of firearms." *United States v Fourteen Various Firearms* (1995, ED Va) 899 F Supp 249.

§ 925. Exceptions: Relief from disabilities [Caution: See prospective amendment notes below.]

(a)(1) The provisions of this chapter [18 USCS §§ 921 et seq.], except for sections 922(d)(9) and 922(g)(9) [18 USCS §§ 922(d)(9) and 922(g)(9)] and provisions relating to firearms subject to the prohibitions of section 922(p) [18 USCS § 922(p)], shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.

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(2) The provisions of this chapter [18 USCS §§ 921 et seq.], except for provisions relating to firearms subject to the prohibitions of section 922(p) [18 USCS § 922(p)], shall not apply with respect to (A) the shipment or receipt of firearms or ammunition when sold or issued by the Secretary of the Army pursuant to section 4308 of title 10 before the repeal of such section by section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act, and (B) the transportation of any such firearm or ammunition carried out to enable a person, who lawfully received such firearm or ammunition from the Secretary of the Army, to engage in military training or in competitions.

(3) Unless otherwise prohibited by this chapter [18 USCS §§ 921 et seq.], except for provisions relating to firearms subject to the prohibitions of section 922(p) [18 USCS § 922(p)], or any other Federal law, a licensed importer, licensed manufacturer, or licensed dealer may ship to a member of the United States Armed Forces on active duty outside the United States or to clubs, recognized by the Department of Defense, whose entire membership is composed of such members, and such members or clubs may receive a firearm or ammunition determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes and intended for the personal use of such member or club.

(4) When established to the satisfaction of the Attorney General to be consistent with the provisions of this chapter [18 USCS §§ 921 et seq.], except for provisions relating to firearms subject to the prohibitions of section 922(p) [18 USCS § 922(p)], and other applicable Federal and State laws and published ordinances, the Attorney General may authorize the transportation, shipment, receipt, or importation into the United States to the place of residence of any member of the United States Armed Forces who is on active duty outside the United States (or who has been on active duty outside the United States within the sixty day period immediately preceding the transportation, shipment, receipt, or importation), of any firearm or ammunition which is (A) determined by the Attorney General to be generally recognized as particularly suitable for sporting purposes, or determined by the Department of Defense to be a type of firearm normally classified as a war souvenir, and (B) intended for the personal use of such member.

(5) For the purpose of paragraph (3) of this subsection, the term "United States" means each of the several States and the District of Columbia.

(b) A licensed importer, licensed manufacturer, licensed dealer, or licensed collector who is indicted for a crime punishable by imprisonment for a term exceeding one year, may, notwithstanding any other provision of this chapter [18 USCS §§ 921 et seq.], continue operation pursuant to his existing license (if prior to the expiration of the term of the existing license timely application is made for a new license) during the term of such indictment and until any conviction pursuant to the indictment becomes final.

(c) A person who is prohibited from possessing, shipping, transporting, or receiving firearms or ammunition may make application to the Attorney General for relief from the disabilities imposed by Federal laws with respect to

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18 USCS § 925

FIREARMS

the acquisition, receipt, transfer, shipment, transportation, or possession of firearms, and the Attorney General may grant such relief if it is established to his satisfaction that the circumstances regarding the disability, and the applicant's record and reputation, are such that the applicant will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. Any person whose application for relief from disabilities is denied by the Attorney General may file a petition with the United States district court for the district in which he resides for a judicial review of such denial. The court may in its discretion admit additional evidence where failure to do so would result in a miscarriage of justice. A licensed importer, licensed manufacturer, licensed dealer, or licensed collector conducting operations under this chapter [18 USCS §§ 921 et seq.], who makes application for relief from the disabilities incurred under this chapter [18 USCS §§ 921 et seq.], shall not be barred by such disability, from further operations under his license pending final action on an application for relief filed pursuant to this section. Whenever the Attorney General grants relief to any person pursuant to this section he shall promptly publish in the Federal Register notice of such action, together with the reasons therefor.

(d) The Attorney General shall authorize a firearm or ammunition to be imported or brought into the United States or any possession thereof if the firearm or ammunition—

(1) is being imported or brought in for scientific or research purposes, or is for use in connection with competition or training pursuant to chapter 401 of title 10 [10 USCS §§ 4301 et seq.];

(2) is an unserviceable firearm, other than a machinegun as defined in section 5845(b) of the Internal Revenue Code of 1954 [26 USCS § 5845(b)] (not readily restorable to firing condition), imported or brought in as a curio or museum piece;

(3) is of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 [26 USCS § 5845(a)] and is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms, except in any case where the Attorney General has not authorized the importation of the firearm pursuant to this paragraph, it shall be unlawful to import any frame, receiver, or barrel of such firearm which would be prohibited if assembled; or

(4) was previously taken out of the United States or a possession by the person who is bringing in the firearm or ammunition.

The Attorney General shall permit the conditional importation or bringing in of a firearm or ammunition for examination and testing in connection with the making of a determination as to whether the importation or bringing in of such firearm or ammunition will be allowed under this subsection.

(e) Notwithstanding any other provision of this title, the Attorney General shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Attorney General pursuant to section 921(a)(13) [18 USCS § 921(a)(13)], and

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(2) All handguns, listed as curios or relics by the Attorney General pursuant to section 921(a)(13) [18 USCS § 921(a)(13)], provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(f) The Attorney General shall not authorize, under subsection (d), the importation of any firearm the importation of which is prohibited by section 922(p) [18 USCS § 922(p)].

(Added June 19, 1968, P. L. 90-351, Title IV, § 902, 82 Stat. 233; Oct. 22, 1968, P. L. 90-618, Title I, § 102, 82 Stat. 1224; Oct. 30, 1984, P. L. 98-573, Title II, Subtitle C, § 233, 98 Stat. 2991; May 19, 1986, P. L. 99-308, § 105, 100 Stat. 459; Nov. 11, 1988, P. L. 100-649, § 2(c), 102 Stat. 3817; Nov. 29, 1990, P. L. 101-647, Title XXII, § 2203(b), (c), 104 Stat. 4857; Feb. 10, 1996, P. L. 104-106, Div A, Title XVI, Subtitle B, § 1624(b)(3), 110 Stat. 522; Oct. 11, 1996, P. L. 104-294, Title VI, § 607(c), 110 Stat. 3511; Sept. 30, 1996, P. L. 104-208, Div A, Title I, § 101(f) [Title VI, § 658(c)], 110 Stat. 3009-372; Nov. 25, 2002, P. L. 107-296, Title XI, Subtitle B, § 1112(f)(6), 116 Stat. 2276; Dec. 9, 2003, P. L. 108-174, § 1(3), 117 Stat. 2481.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

The "Internal Revenue Code of 1954", which was Act Feb. 10, 1939, ch 2, 53 Stat. 1, was redesignated as the Internal Revenue Code of 1986 by Act Oct. 22, 1986, P. L. 95-514, § 2(a), 100 Stat. 2095. In redesignating the Internal Revenue Code of 1954 as the Internal Revenue Code of 1986, Congress provided, in Act Oct. 22, 1986, P. L. 95-514, § 2(b), 100 Stat. 2095, for construction of references to the Internal Revenue Code as follows: except when inappropriate, any reference in any law, Executive Order, or other document to the Internal Revenue Code of 1954 shall include a reference to the Internal Revenue Code of 1986 and any reference to the Internal Revenue Code of 1986 shall include a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

"Section 1624(a) of the Corporation for the Promotion of Rifle Practice and Firearms Safety Act", referred to in subsec. (a)(2), is § 1624(a) of Act Feb. 10, 1996, P. L. 104-106.

Prospective amendments:

Amendment of subsec. (a)(1)-(4), effective December 10, 2013. Section 2(f)(2)(E) of Act Nov. 11, 1988, P. L. 100-649, which appears as 18 USCS § 922 note, provides that effective 25 years after the effective date of such Act (effective on the 30th day after Nov. 10, 1988) subsec. (a) of this section is amended—

"(i) in paragraph (1), by striking 'and provisions relating to firearms subject to the prohibitions of section 922(p)'; and

"(ii) in paragraph (2), by striking ', except for provisions relating to firearms subject to the prohibitions of section 922(p),'; and

"(iii) in each of paragraphs (3) and (4), by striking 'except for provisions relating to firearms subject to the prohibitions of section 922(p),'."

Repeal of subsec. (f), effective December 10, 2013. Section 2(f)(2)(C) of

43.

Similar Provisions

Provisions similar to those comprising this section were contained in prior § 5842, Act Aug. 16, 1954, 68A Stat. 725, prior to the general revision of this chapter by Pub.L. 90-618.

Prior Provisions

A prior § 5843, Act Aug. 16, 1954, c. 736, 68A Stat. 725, as amended by Act Sept. 2, 1958, Pub.L. 85-859, Title II, § 203(e), 72 Stat. 1427, related to identification of firearms prior to the general revision of this chapter by Pub.L. 90-618. See, now, § 5842 of this title.

§ 5844. Importation

No firearm shall be imported or brought into the United States or any territory under its control or jurisdiction unless the importer establishes, under regulations as may be prescribed by the Secretary, that the firearm to be imported or brought in is—

- (1) being imported or brought in for the use of the United States or any department, independent establishment, or agency thereof or any State or possession or any political subdivision thereof; or
- (2) being imported or brought in for scientific or research purposes; or
- (3) being imported or brought in solely for testing or use as a model by a registered manufacturer or solely for use as a sample by a registered importer or registered dealer;

except that, the Secretary may permit the conditional importation or bringing in of a firearm for examination and testing in connection with classifying the firearm.

(Added Pub.L. 90-618, Title II, § 201, Oct. 22, 1968, 82 Stat. 1230, and amended Pub.L. 94-455, Title XIX, § 1906(b) (13) (A), Oct. 4, 1976, 90 Stat. 1834.)

HISTORICAL AND STATUTORY NOTES**Revision Notes and Legislative Reports**

1968 Act. House Report No. 1577 and House Conference Report No. 1956, see 1968 U.S. Code Cong. and Adm. News, p. 4410.

1976 Act. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S. Code Cong. and Adm. News, p. 2897.

Effective Dates

1968 Act. Section effective the first day of the first month following October, 1968, see § 207 of Pub.L. 90-618, set out as a note under § 5801 of this title.

Similar Provisions

Provisions similar to those comprising this section were contained in prior § 5845, Act Aug. 16, 1954, c. 736, 68A Stat. 725, prior to the general revision of this chapter by Pub.L. 90-618.

Prior Provisions

A prior § 5844, Act Aug. 16, 1954, c. 736, 68A Stat. 725, related to exportation, prior to the general revision of this chapter by Pub.L. 90-618.

§ 5845. Definitions

For the purpose of this chapter—

(a) **Firearm.**—The term “firearm” means (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term “firearm” shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

(b) **Machinegun.**—The term “machinegun” means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

(c) **Rifle.**—The term “rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge.

(d) **Shotgun.**—The term “shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed shotgun shell.

→ (e) **Any other weapon.**—The term “any other weapon” means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.

? → (f) **Destructive device.**—The term “destructive device” means (1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled. The term “destructive device” shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 of the United States Code; or any other device which the Secretary finds is not likely to be used as a weapon, or is an antique or is a rifle which the owner intends to use solely for sporting purposes.

(g) **Antique firearm.**—The term “antique firearm” means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(h) **Unserviceable firearm.**—The term “unserviceable firearm” means a firearm which is incapable of discharging a shot by means of an explosive and incapable of being readily restored to a firing condition.

(i) **Make.**—The term “make”, and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm.

(j) **Transfer.**—The term “transfer” and the various derivatives of such word, shall include selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of.

(k) **Dealer.**—The term “dealer” means any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans.

(l) **Importer.**—The term “importer” means any person who is engaged in the business of importing or bringing firearms into the United States.

(m) **Manufacturer.**—The term “manufacturer” means any person who is engaged in the business of manufacturing firearms.

(Added Pub.L. 90-618, Title II, § 201, Oct. 22, 1968, 82 Stat. 1230, and amended Pub.L. 94-455, Title XIX, § 1906(b)(13)(A), (J), Oct. 4, 1976, 90 Stat. 1834, 1835; Pub.L. 99-308, § 109, May 19, 1986, 100 Stat. 460.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1968 Act. House Report No. 1577 and Conference Report No. 1956, see 1968 U.S.Code Cong. and Adm.News, p. 4410.

1976 Act. House Report Nos. 94-658, 94-1380, Senate Report No. 94-938, and House Conference Report No. 94-1515, see 1976 U.S.Code Cong. and Adm.News, p. 2897.

1986 Act. House Report No. 99-495, see 1986 U.S.Code Cong. and Adm.News, p. 1327.

References in Text

Section 4684(2), 4685, or 4686 of title 10 of the United States Code, referred to in subsec. (f), are §§ 4684(2), 4685, and 4686 of Title 10, Armed Forces.

Effective Dates

1986 Act. Amendment by Pub.L. 99-308 effective 180 days after May 19, 1986, see section 110(a) of Pub.L. 99-308, set out as a note under section 921 of Title 18, Crimes and Criminal Procedure.

1968 Act. Section effective the first day of the first month following October, 1968, except as to persons possessing firearms as defined in subsec. (a) which are not registered to such persons in the National Firearms Registration and Transfer Record, see § 207 of Pub.L. 90-618, set out as a note under § 5801 of this title.

Complete Annotation Materials, see Title 26 U.S.C.A.

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EXHIBIT H.

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CHAPTER 44. FIREARMS

- Section
- 921. Definitions
- 922. Unlawful acts
- 923. Licensing
- 924. Penalties
- 925. Exceptions: Relief from disabilities
- 925A. Remedy for erroneous denial of firearm
- 926. Rules and regulations
- 926A. Interstate transportation of firearms
- 926B. Carrying of concealed firearms by qualified law enforcement officers
- 926C. Carrying of concealed firearms by qualified retired law enforcement officers
- 927. Effect on State law
- 928. Separability
- 929. Use of restricted ammunition
- 930. Possession of firearms and dangerous weapons in Federal facilities
- 931. Prohibition on purchase, ownership, or possession of body armor by violent felons



HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

- 1968. Act June 19, 1968, P. L. 90-351, Title IV, § 902, 82 Stat. 226, added the chapter analysis.
- Act Oct. 22, 1968, P. L. 90-618, Title I, § 102, 82 Stat. 1214, reenacted the chapter analysis, without change, in its entirety.
- 1984. Act Oct. 12, 1984, P. L. 98-473, Title II, Ch X, Part E, § 1006(b), 98 Stat. 2139, amended the analysis of this chapter by adding item 929.
- 1986. Act May 19, 1986, P. L. 99-308, § 107(b), 100 Stat. 460, amended the analysis of this chapter by adding item 926A.
- 1988. Act Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle G, § 6215(b), 102 Stat. 4360, amended the analysis of this chapter by adding item 930.
- 1990. Act Nov. 29, 1990, P. L. 101-647, Title XXXV, § 3523, 104 Stat. 4924, amended the analysis of this chapter by deleting "clause" following "Separability" in item 928.
- 1993. Act Nov. 30, 1993, P. L. 103-159, Title I, § 104(b), 107 Stat. 1543, amended the analysis of this chapter by adding item 925A.
- 2002. Act Nov. 2, 2002, P. L. 107-273, Div C, Title I, Subtitle A, § 11009(e)(2)(B), 116 Stat. 1821, amended the analysis of this chapter by adding item 931.
- 2004. Act July 22, 2004, P. L. 108-277, §§ 2(b), 3(b), 118 Stat. 866, 867, amended the analysis of this chapter by adding items 926B and 926C.

CROSS REFERENCES

This chapter is referred to in 18 USCS § 922; 26 USCS § 4182; 42 USCS § 3795.



§ 921. Definitions

(a) As used in this chapter [18 USCS §§ 921 et seq.]—



46.

(1) The term "person" and the term "whoever" include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term "interstate or foreign commerce" includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term "firearm" means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term "destructive device" means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

(B) any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; and

(C) any combination of parts either designed or intended for use in converting any device into any destructive device described in subparagraph (A) or (B) and from which a destructive device may be readily assembled.

The term "destructive device" shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of title 10 [10 USCS § 4682(2), 4685, or 4686]; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.

(5) The term "shotgun" means a weapon designed or redesigned, made or

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remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.

(6) The term "short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon as modified has an overall length of less than twenty-six inches.

(7) The term "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire only a single projectile through a rifled bore for each single pull of the trigger.

(8) The term "short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.

(9) The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(10) The term "manufacturer" means any person engaged in the business of manufacturing firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(11) The term "dealer" means (A) any person engaged in the business of selling firearms at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels, stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term "licensed dealer" means any dealer who is licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(12) The term "pawnbroker" means any person whose business or occupation includes the taking or receiving, by way of pledge or pawn, of any firearm as security for the payment or repayment of money.

(13) The term "collector" means any person who acquires, holds, or disposes of firearms as curios or relics, as the Attorney General shall by regulation define, and the term "licensed collector" means any such person licensed under the provisions of this chapter [18 USCS §§ 921 et seq.].

(14) The term "indictment" includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.

(15) The term "fugitive from justice" means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding.

(16) The term "antique firearm" means—

(A) any firearm (including any firearm with a matchlock, flintlock, percus-

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sion cap, or similar type of ignition system) manufactured in or before 1898; or

(B) any replica of any firearm described in subparagraph (A) if such replica—

(i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition, or

(ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; or

(C) any muzzle loading rifle, muzzle loading shotgun, or muzzle loading pistol, which is designed to use black powder, or a black powder substitute, and which cannot use fixed ammunition. For purposes of this subparagraph, the term "antique firearm" shall not include any weapon which incorporates a firearm frame or receiver, any firearm which is converted into a muzzle loading weapon, or any muzzle loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

→ (17)(A) The term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(B) The term "armor piercing ammunition" means—

(i) a projectile or projectile core which may be used in a handgun and which is constructed entirely (excluding the presence of traces of other substances) from one or a combination of tungsten alloys, steel, iron, brass, bronze, beryllium copper, or depleted uranium; or

(ii) a full jacketed projectile larger than .22 caliber designed and intended for use in a handgun and whose jacket has a weight of more than 25 percent of the total weight of the projectile.

(C) The term "armor piercing ammunition" does not include shotgun shot required by Federal or State environmental or game regulations for hunting purposes, a frangible projectile designed for target shooting, a projectile which the Attorney General finds is primarily intended to be used for sporting purposes, or any other projectile or projectile core which the Attorney General finds is intended to be used for industrial purposes, including a charge used in an oil and gas well perforating device.

(18) The term "Attorney General" means the Attorney General of the United States[.]

* (19) The term "published ordinance" means a published law of any political subdivision of a State which the Attorney General determines to be relevant to the enforcement of this chapter [18 USCS §§ 921 et seq.] and which is contained on a list compiled by the Attorney General, which list shall be published in the Federal Register, revised annually, and furnished to each licensee under this chapter [18 USCS §§ 921 et seq.] ←

(20) The term "crime punishable by imprisonment for a term exceeding one year" does not include—

(A) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or

(B) any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less.

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(21) The term "engaged in the business" means—

(A) as applied to a manufacturer of firearms, a person who devotes time, attention, and labor to manufacturing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms manufactured;

(B) as applied to a manufacturer of ammunition, a person who devotes time, attention, and labor to manufacturing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition manufactured;

(C) as applied to a dealer in firearms, as defined in section 921(a)(11)(A) [18 USCS § 921(a)(11)(A)], a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms, but such term shall not include a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms;

(D) as applied to a dealer in firearms, as defined in section 921(a)(11)(B) [18 USCS § 921(a)(11)(B)], a person who devotes time, attention, and labor to engaging in such activity as a regular course of trade or business with the principal objective of livelihood and profit, but such term shall not include a person who makes occasional repairs of firearms, or who occasionally fits special barrels, stocks, or trigger mechanisms to firearms;

(E) as applied to an importer of firearms, a person who devotes time, attention, and labor to importing firearms as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the firearms imported; and

(F) as applied to an importer of ammunition, a person who devotes time, attention, and labor to importing ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of the ammunition imported.

(22) The term "with the principal objective of livelihood and profit" means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection: *Provided*, That proof of profit shall not be required as to a person who engages in the regular and repetitive purchase and disposition of firearms for criminal

purposes or terrorism. For purposes of this paragraph, the term "terrorism" means activity, directed against United States persons, which—

(A) is committed by an individual who is not a national or permanent resident alien of the United States;

(B) involves violent acts or acts dangerous to human life which would be a criminal violation if committed within the jurisdiction of the United States; and

(C) is intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnapping.

(23) The term "machinegun" has the meaning given such term in section 5845(b) of the National Firearms Act (26 U.S.C. 5845(b)).

(24) The terms "firearm silencer" and "firearm muffler" mean any device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.

(25) The term "school zone" means—

(A) in, or on the grounds of, a public, parochial or private school; or

(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

(26) The term "school" means a school which provides elementary or secondary education, as determined under State law.

(27) The term "motor vehicle" has the meaning given such term in section 13102 of title 49, United States Code [49 USCS § 13102].

(28) The term "semiautomatic rifle" means any repeating rifle which utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round, and which requires a separate pull of the trigger to fire each cartridge.

(29) The term "handgun" means—

(A) a firearm which has a short stock and is designed to be held and fired by the use of a single hand; and

(B) any combination of parts from which a firearm described in subparagraph (A) can be assembled.

(30), (31) [Repealed]

(32) The term "intimate partner" means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33)(A) Except as provided in subparagraph (C), the term "misdemeanor crime of domestic violence" means an offense that—

(i) is a misdemeanor under Federal or State law; and

- (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.
- (B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.], unless—
- (I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and
 - (II) in the case of a prosecution for an offense described in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either
 - (aa) the case was tried by a jury, or
 - (bb) the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.
- (ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter [18 USCS §§ 921 et seq.] if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
- (34) The term "secure gun storage or safety device" means—
- (A) a device that, when installed on a firearm, is designed to prevent the firearm from being operated without first deactivating the device;
 - (B) a device incorporated into the design of the firearm that is designed to prevent the operation of the firearm by anyone not having access to the device; or
 - (C) a safe, gun safe, gun case, lock box, or other device that is designed to be or can be used to store a firearm and that is designed to be unlocked only by means of a key, a combination, or other similar means.
- (35) The term "body armor" means any product sold or offered for sale, in interstate or foreign commerce, as personal protective body covering intended to protect against gunfire, regardless of whether the product is to be worn alone or is sold as a complement to another product or garment.
- (b) For the purposes of this chapter [18 USCS §§ 921 et seq.], a member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located.
- (Added June 19, 1968, P. L. 90-351, Title IV, § 902, 82 Stat. 226; Oct. 22, 1968, P. L. 90-618, Title I, § 102, 82 Stat. 1214; Jan. 4, 1975, P. L. 93-639, § 102, 88 Stat. 2217; May 19, 1986, P. L. 99-308, § 101, 100 Stat. 449; July 8, 1986, P. L. 99-360, § 1(b), 100 Stat. 766; Aug. 28, 1986, P. L. 99-408, § 1, 100

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PART B - GENERAL APPLICATION PRINCIPLES

§1B1.1. Application Instructions

Except as specifically directed, the provisions of this manual are to be applied in the following order:

- (a) Determine, pursuant to §1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See §1B1.2.
- (b) Determine the base offense level and apply any appropriate specific offense characteristics, cross references, and special instructions contained in the particular guideline in Chapter Two in the order listed.
- (c) Apply the adjustments as appropriate related to victim, role, and obstruction of justice from Parts A, B, and C of Chapter Three.
- (d) If there are multiple counts of conviction, repeat steps (a) through (c) for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.
- (e) Apply the adjustment as appropriate for the defendant's acceptance of responsibility from Part E of Chapter Three.
- (f) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Part B of Chapter Four any other applicable adjustments.
- (g) Determine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above.
- (h) For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution.
- (i) Refer to Parts H and K of Chapter Five, Specific Offender Characteristics and Departures, and to any other policy statements or commentary in the guidelines that might warrant consideration in imposing sentence.

CommentaryApplication Notes:

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1. *The following are definitions of terms that are used frequently in the guidelines and are of general applicability (except to the extent expressly modified in respect to a particular guideline or policy statement):*

- (A) "Abducted" means that a victim was forced to accompany an offender to a different location. For example, a bank robber's forcing a bank teller from the bank into a getaway car would constitute an abduction.
- (B) "Bodily injury" means any significant injury; e.g., an injury that is painful and obvious, or is of a type for which medical attention ordinarily would be sought.
- (C) "Brandished" with reference to a dangerous weapon (including a firearm) means that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person. Accordingly, although the dangerous weapon does not have to be directly visible, the weapon must be present.
- (D) "Dangerous weapon" means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) the defendant used the object in a manner that created the impression that the object was such an instrument (e.g. a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).
- (E) "Departure" means (i) for purposes other than those specified in subdivision (ii), imposition of a sentence outside the applicable guideline range or of a sentence that is otherwise different from the guideline sentence; and (ii) for purposes of §4A1.3 (Departures Based on Inadequacy of Criminal History Category), assignment of a criminal history category other than the otherwise applicable criminal history category, in order to effect a sentence outside the applicable guideline range. "Depart" means grant a departure.
- "Downward departure" means departure that effects a sentence less than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise less than the guideline sentence. "Depart downward" means grant a downward departure.
- "Upward departure" means departure that effects a sentence greater than a sentence that could be imposed under the applicable guideline range or a sentence that is otherwise greater than the guideline sentence. "Depart upward" means grant an upward departure.
- (F) "Destructive device" means any article described in 26 U.S.C. § 5845(f) (including an explosive, incendiary, or poison gas - (i) bomb, (ii) grenade, (iii) rocket having a propellant charge of more than four ounces, (iv) missile having an explosive or incendiary charge of more than one-quarter ounce, (v) mine, or (vi) device similar to any of the devices described in the preceding clauses).
- (G) "Firearm" means (i) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (ii) the frame or receiver of any such weapon; (iii) any firearm muffler or silencer; or (iv) any

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destructive device. A weapon, commonly known as a "BB" or pellet gun, that uses air or carbon dioxide pressure to expel a projectile is a dangerous weapon but not a firearm.



- (H) "Offense" means the offense of conviction and all relevant conduct under §1B1.3 (Relevant Conduct) unless a different meaning is specified or is otherwise clear from the context. The term "instant" is used in connection with "offense," "federal offense," or "offense of conviction," as the case may be, to distinguish the violation for which the defendant is being sentenced from a prior or subsequent offense, or from an offense before another court (e.g., an offense before a state court involving the same underlying conduct).
- (I) "Otherwise used" with reference to a dangerous weapon (including a firearm) means that the conduct did not amount to the discharge of a firearm but was more than brandishing, displaying, or possessing a firearm or other dangerous weapon.
- (J) "Permanent or life-threatening bodily injury" means injury involving a substantial risk of death; loss or substantial impairment of the function of a bodily member, organ, or mental faculty that is likely to be permanent; or an obvious disfigurement that is likely to be permanent. In the case of a kidnapping, for example, maltreatment to a life-threatening degree (e.g., by denial of food or medical care) would constitute life-threatening bodily injury.
- (K) "Physically restrained" means the forcible restraint of the victim such as by being tied, bound, or locked up.
- (L) "Serious bodily injury" means injury involving extreme physical pain or the protracted impairment of a function of a bodily member, organ, or mental faculty; or requiring medical intervention such as surgery, hospitalization, or physical rehabilitation. In addition, "serious bodily injury" is deemed to have occurred if the offense involved conduct constituting criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.
2. Definitions of terms also may appear in other sections. Such definitions are not designed for general applicability; therefore, their applicability to sections other than those expressly referenced must be determined on a case by case basis.

The term "includes" is not exhaustive; the term "e.g." is merely illustrative.

3. The list of "Statutory Provisions" in the Commentary to each offense guideline does not necessarily include every statute covered by that guideline. In addition, some statutes may be covered by more than one guideline.
4. (A) Cumulative Application of Multiple Adjustments within One Guideline.—The offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively (added together) unless the guideline specifies that only the greater (or greatest) is to be used. Within each specific offense characteristic subsection, however, the offense level adjustments are alternative; only the one that best describes the conduct is to be used. For example, in §2A2.2(b)(3), pertaining to degree

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SUPREME COURT'S VIEWS AS TO THE "RULE OF LENITY" IN THE CONSTRUCTION OF CRIMINAL STATUTES

BY Daniel A. Per-Lee, J.D.

I. Preliminary Matters

§ 1. Introduction

[a] Scope

[b] Related matters

[b]

§ 2. Background and summary

II. General considerations

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§ 4. Rule as precluding harsher punishment under ambiguous sentencing statutes

III. Applicability of rule of lenity as to particular matters

A. Matters involving substantive ambit of particular statutes

§ 5. Clean Air Act

§ 6. Gun control legislation

[a] Rule applied

[b] Rule held inapplicable

§ 7. Hobbs Act

§ 8. Organized Crime Control Act

§ 9. Securities Act of 1933

§ 10. Travel Act

[a] Rule applied

[b] Rule held inapplicable

B. Matters involving sentencing and punishment

§ 10.5. Miscellaneous

§ 11. Determining "unit of prosecution" when single statute is violated

§ 12. Cumulative punishment for violation of overlapping statutes

[a] Rule applied

[b] Rule held inapplicable

§ 13. Alternative sentencing provisions

[a] Rule applied

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[b] Rule held inapplicable
§ 14. Miscellaneous

Encyclopedias, Treatises, and Specialized Services

Effect upon prior convictions of McNally v United States rule that mail fraud statute (18 USCS § 1341) is directed

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