
DEFENDING FEDERAL FIREARM OFFENSES

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FEDERAL FIREARM OFFENSES

- DEFINITION OF FIREARM – 18 U.S.C. §921(g)
- POSSESSION OF PROHIBITED FIREARMS - 18 U.S.C.A § 921; 26 U.S.C. § 5801 et. seq.
- POSSESSION OF FIREARMS BY PROHIBITED PERSON – 18 U.S.C §922(g)
- GUNS AND DRUGS: 18 U.S.C. § 924(c)
- SENTENCING ISSUES

FIREARM DEFINED

26 U.S.C. § 5801 *et seq.*

- Short-barreled shotguns (less than 18" barrel) or weapon made from a shotgun with a barrel less than 18" and less than 26" overall length)
- Short-barreled rifles (less than 16" barrels) or a weapon made from a rifle with barrels less than 16" and less than 26" overall length) Unregistered machine guns
- Unregistered machine guns
- Hideable guns (*see* 26 U.S.C 5845(e))
- Destructive devices (*see* 26 U.S.C 5845(f))

18 U.S.C. § 921, *et. seq.*

- Short-barreled shotguns (less than 18" barrel) or weapon made from a shotgun with a barrel less than 18" and less than 26" overall length)
- Short-barreled rifles (less than 16" barrels) or a weapon made from a rifle with barrels less than 16" and less than 26" overall length) Unregistered machine guns
- Machine guns
- Destructive devices (*see* 18 U.S.C 921(a)(4))

EXCEPTIONS (NOT FIREARMS)

- *Antique Firearms are excluded from the definition of “Firearm.”*
- *MUSSLE LOADERS using black powder are also excluded from the definition of “Firearm.”*

DESTRUCTIVE DEVICE:

- A “destructive device” includes any explosive, incendiary or poison gas --- (i) bomb; (ii) grenade, (iii) rocket, (iv) missile, (v) mine or (vi) similar device, or any combination of parts designed or intended to be converted into a destructive device, or from which a destructive device may be readily assembled.

Rockets have to have more than 4oz of propellant charge

Missiles requiring explosive or incendiary charges greater than $\frac{1}{4}$ oz.

PROHIBITED WEAPONS

- *Armor piercing ammunition;*
- *Machine guns*
- *Destructive Devices*

Registered Machine guns are not prohibited weapons.

Grandfathered Machine guns are not prohibited weapons.

PROHIBITED PERSONS:

18 U.S.C. 922(g)(1-9)

- (1) Convicted Felons;
- (2) Fugitive from Justice
- (3) Unlawful user or addict of any controlled substance;
- (4) Adjudicated mental defectives or those committed to mental institutions;
- (5) Illegally or unlawfully in the U.S.
- (6) Dishonorably discharged from the Armed Forces
- (7) Those that have renounced their U.S. citizenship
- (8) Subject to Restraining Order that involves intimate partner or children; harassment, stalking, or reasonable fear of threatened bodily injury and a finding that there's a credible threat to the physical safety or prohibits the use, attempted use or threatened use of physical force against the IP or child.
- (9) Convicted of Misdemeanor crime of domestic violence.

DISCOVERY AND INVESTIGATION

- (1) DISCOVERY (FRCP 16):
 - Request from the Government everything that the rule allows and those things you want.
- (2) INVESTIGATION
 - Do background checks of every witness including social media accounts.
 - Go to scene, take photos, look for cameras that may have captured the incident, and knock on doors for eyewitnesses and conduct interviews.
 - Gather all documents available about your client's criminal history and/or history pertaining to the prohibited status alleged in the indictment.
 - Use this opportunity to gather social history of your client for mitigation/sentencing issues.
 - Subpoena dash camera, body camera and other recordings from law enforcement.
 - Interview your client and gather information that is not contained in police reports.

PRETRIAL ISSUES

- (1) SUPPRESSION MOTIONS:

- Traffic Stops – Unlawful stop or stop exceeded the scope or duration necessary for the stop.
- Consensual encounters, investigatory stops and arrests.
- Warrantless searches –
 - (1) consent
 - (2) search of a detainee (Terry Frisk)
 - (3) search incident to arrest
 - (4) search of a vehicle with probable cause
 - (5) Inventory search conducted according to established policy.
 - (6) Exigent Circumstances
- Expectations of Privacy “Standing”
 - Passengers in vehicles
 - Non-occupant guests (overnight guests and hotel/motel guest

PRETRIAL ISSUES cont.

- (2) MOTIONS IN LIMINE:
 - Information regarding the alleged use of a firearm or shell cases in a violent crime or otherwise.
 - Prior Criminal History of the Defendant
 - Jail Calls
 - Challenge the admissibility of Social Media Posts and/or the redaction of information contained the materials that are more prejudicial than probative.

18 U.S.C. 922(g) ELEMENTS

- (1) Defendant was a prohibited person
- (2) Defendant knowingly possessed the firearm or ammunition,
- (3) Defendant had knowledge of his prohibited status, and
- (4) Interstate Nexus

Rehaif v. United States, 131 S.Ct. 2191; 588 U.S. ____ (2019)

Issue: Whether the “knowingly” provisions of 18 U.S.C §924(a)(2) applies to both the possession and status element of §922(g) or to just the possession element.

Held: In a prosecution under §922(g) and §924(a)(2), the Government must prove both that the defendant knew he possessed a firearm and that he knew he belonged to the relevant category of persons barred from possessing a firearm.

18 U.S.C. 924(c) Elements

- (1) uses or carries a firearm;
- (2) during and in relation to any crime of violence which may be prosecuted in a court of the United States; or
- (3) during a drug trafficking offense which may be prosecuted in a court of the United States;
- (4) possesses a firearm in furtherance of any such offense.

SENTENCING ISSUES

- Armed Career Criminal Act – 18 U.S.C § 924(e)
 - Mandatory Minimum – 15 to life
 - 3 priors – either COV or SDO or any combination of COV and SDO totaling 3
 - Must be committed on separate occasions
- COV - (1) Force Clause and (2) the Enumerated Offenses
- SDO – a drug offense that carries a sentence of ten years or more (drug offense as defined by federal law)

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