

# DEFENDING FIREARMS CASES

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# OVERVIEW

- Mere possession of firearms
- Using firearms as part of other crimes
- Sentencing Issues

The best robbery ever

# Possession of Firearms-Title 18

- Is it a “firearm” as defined by statute?
- **FOUR DIFFERENT QUESTIONS**
  - Is it a “gun”
  - Is it a “frame or receiver”
  - Is it a “silencer” or “muffler”
  - Is it a “destructive device

# DEFINITION OF TYPICAL “GUN”

“any weapon (including a starter gun)”

– Which either

- “Will” or
- “is designed to” or
- May be “readily converted to...”
- “EXPEL A PROJECTILE BY THE ACTION OF AN EXPLOSIVE”

• Minimal proof required

– United States v. Hunt, 187 F. 3d 1269 (11<sup>th</sup> Cir. 1999)

# “FRAME OR RECEIVER”

- Generally contains firing mechanism
- Grip, trigger housing, stock and barrel attached

# “SILENCER” OF “MUFFLER”

- Defined at 18 U.S.C. section 921(a)(24)
- Must “diminish the report of a portable firearm”

# “DESTRUCTIVE DEVICE”

- Defined at 18 U.S.C. section 921(a)(4)
  - Explosives
  - Things designed to expel projectiles via use of an explosives with barrel having a bore of more than  $\frac{1}{2}$  inch diameter
  - Pieces and parts that can be combined to meet the above definitions



# “PROHIBITED PERSONS”

- FELONS

- Title of crime more important than length of sentence, 18 U.S.C. 921(a)(20)
- Restoration of rights doesn't help unless done by the feds
- Constitutionally invalid priors can be used
- Foreign priors cannot be used
  - United States v. Small, 125 S.Ct. 752 (2005)

# PROHIBITED PERSONS

- OTHER CATEGORIES
  - Drug users-vagueness and temporal challenges
  - Adjudicated mentally defective-how do you know?
  - Fugitives-prosecution needs to prove defendant was fleeing
  - Aliens-check to see if status OK when had gun
  - Misdemeanor crimes of domestic violence

# MENS REA ISSUES

Obvious defense-knowing possession

Have to prove defendant knew  
characteristics that made the weapon a  
prohibited gun

Compare Title 26 firearms,

- United States v. Staples, 511 U.S. 600 (1994)

# INTERSTATE COMMERCE

How they normally try to prove it

Rule 16 and Daubert issues

The strange case of U.S. v. Charles Haggett

# OTHER DEFENSES

- ENTRAPMENT
- ESTOPPEL
- U.S. v. Palma, (11<sup>th</sup> Cir. 1-4-08)(handout)

# REMEMBER “OLD CHIEF”

- STIPULATE
- SEVER
- DIVIDE AND CONQUER

# USING A GUN

- SUPREME COURT IN LOVE WITH 924©
- THREE METHODS OF PROOF
  - “USE...DURING AND IN RELATION TO”
    - REQUIRES “ACTIVE EMPLOYMENT”
    - “TRADING”-Smith or Watson
  - “CARRY...DURING AND IN RELATION TO”
    - TRANSPORTATION USUALLY ENOUGH
  - “POSSESS...IN FURTHERANCE OF”
    - IS “MERE PRESENCE” ENOUGH?

# SENTENCING ISSUES

- GUIDELINES
- ACCA
- 924© ISSUES



# USSSG 2K2.1

- TYPE OF WEAPON
- PRIORS
- STATUS
- “IN CONNECTION WITH ANOTHER OFFENSE”

# ARMED CAREER CRIMINAL

- “SERIOUS DRUG OFFENSE”
- “VIOLENT FELONY”
- NO TIME LIMIT
- SEE ALSO USSG 4B1.4
- PRIORS MUST PRECEDE POSSESSION
- BEWARE OF DUI’S

# PLEA OPTIONS

- STOLEN WEAPONS CAP STATUTORY  
MAXIMUM AT 10 YEARS
- DROPPING ONE OR MORE 924©'s
- BE WARY OF TRYING TO HIDE PRIORS  
UNDER ACCA





