The Top Ten Things You Need to Know about Federal Gun Law

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Intro: Why does this matter to you?

- Because our state clients are “sitting ducks” for federal gun prosecution, and we need to help them.

- “In the past three years, federal gun prosecutions have increased by 68 percent.”
  - John Ashcroft, December 11, 2003
The Top Ten (in no particular order)

- #10: No Guns for Felons
- #9: No Guns after Misdemeanor Domestic Violence (DV) Convictions
- #8: PJC’s Are No Help
- #7: No Guns While Under Indictment
- #6: No Guns for Drug Users
#5: No Home or Business Exception
#4: No Exception for Long Guns
#3: No Guns AND No Ammo
#2: Ignorance of the Law is No Excuse
#1: No Realistic Chance of Regaining the Right to Own a Gun
#10: No Guns for Felons

- “Felon” means anyone “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year”

- Even low level Class I felonies included, because they are “punishable” by more than one year imprisonment in Prior Record Level VI
Misdemeanors are not included in this category, even if they are punishable by more than one year imprisonment:

- DWI’s
- General Misdemeanors under the old Fair Sentencing Act (pre-October 1, 1994)

BUT: some misdemeanors are subject to the federal gun ban in the next category . . .
Any misdemeanor that “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.”
Two parts:
- Conviction for a misdemeanor assault (simple assault, assault on a female, etc)
- Victim is spouse, ex-spouse, significant other, child
- Lifetime federal gun ban – just like felons
- Also applies to communicating threats for threatening use of a deadly weapon
What about civil domestic violence protective orders (DVPO’s)?

- Federal gun ban applies while the DVPO is in effect, but not after

- **Practice Tip:** agree to the entry of the DVPO in exchange for dismissal of the misdemeanor crime of domestic violence

- Client gets guns back after DVPO expires
#8: PJC’s Are No Help

- The argument would be: a PJC is not a “conviction” under state law; therefore, a PJC on a misdemeanor crime of DV or a PJC on a felony is not a “conviction” triggering the federal gun ban.

- But for PJC’s on DV misdemeanors: no room in the federal statutes to make this argument.

- And for PJC’s on felonies, state law ruins it for us:
Federal law does open the possibility of looking to state law to see whether a felony with a PJC counts as a conviction

But if the federal courts look to our state’s law, they will see *State v. Friend*, --- N.C. App. ---, 609 S.E.2d 473 (March 15, 2005): NC Court of Appeals held that a PJC in a felony case qualifies as a “felony conviction” for purposes of the North Carolina felon in possession statute

If it’s a conviction for the state gun statute, then it’s almost certainly going to be a conviction for the federal gun statute
#7: No Guns While Under Indictment

- Anyone who is “under indictment for a crime punishable by imprisonment for a term exceeding one year” is not allowed “to ship or transport . . . any firearm or ammunition or receive any such firearm or ammunition.”

- Even if they have no prior felony convictions
Expressly bans “receiving” and “transporting” and “shipping”

- So you cannot buy a new gun while under indictment – that would be “receiving”
- What about old guns – the ones you owned before being indicted? Do you have to get rid of them?
- Maybe not – no mention of merely “possessing” a gun
But – if you possess it in your car, you are probably “transporting” it.

What if you have it in your pocket while you are walking down the street?

Would you like your client to be the test case in the Fourth Circuit?

I tell my clients not to have any guns at all while under indictment – old or new.
#6: No Guns for Drug Users

- Anyone “who is an unlawful user of or addicted to any controlled substance”

- Case law:
  - “[T]he exact reach of the statute is not easy to define.”
  - Does not apply to “infrequent” drug users or to those who used drugs in the “distant past”
- Applies to those whose drug use is “sufficiently consistent, ‘prolonged,’ and close in time to [their] gun possession to put [them] on notice that [they] qualified as an unlawful user of drugs under the statute”

- If you have someone with a known drug problem, tell them to get rid of their guns

- For close calls, advise them of the law and let them decide
#5: No “Home or Business” Exception

- Never under federal law
- And not any more under state law
  - Before December 1, 2004, state law permitted a felon to keep a gun “within in his own home or on his lawful place of business”
  - But that was eliminated effective December 1, 2004
And even when it was OK under state law, it was not OK under federal law

“[T]he fact that state law permitted [the defendant] to possess a firearm in his home despite his status as a convicted felon . . . [was] not sufficient to insulate him from federal prosecution.” United States v. King, 119 F.3d 290, 293 (4th Cir. 1997)
#4: No Exception for Long Guns

- Never under federal law
- And not anymore under state law
  - Prior to December 1, 2004, North Carolina’s felon-in-possession statute prohibited only the possession of a “handgun or other firearm with a barrel length of less than 18 inches or an overall length of less than 26 inches.”
  - But that was eliminated effective December 1, 2004
And even when it was OK under state law, it was not OK under federal law.
#3: No Guns AND No Ammo

- The federal ban forbids possession of any “firearm”
  - “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.” Also includes the frame of a weapon and silencers.

- It also forbids possession of any “ammunition”
  - “Cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.”
So – could possession of a single bullet lead to federal prosecution?

YES – at least in Pitt County (Greenville)

- Actual possession – bullet in shirt pocket
- Nothing yet on constructive possession – let me know if you hear about that
#2: Ignorance of the Law is No Excuse

- Prosecutors in federal court are NOT required to prove that the defendant knew that he was subject to the federal firearms ban
#1: No Realistic Chance of Regaining the Right to Own a Gun

- Under state law:
  - Prior to December 1, 1995, a felon automatically regained the right to own a gun five years after finishing his felony sentence
  - As of December 1, 1995:
    - No more regaining that right
    - And if you regained it prior to December 1, 1995, you lost it again as of December 1, 1995 – applied to ALL felons, even those convicted before December 1, 1995
Wasn’t that an *ex post facto* violation? Not according to *State v. Johnson*, --- N.C. App. ---, 2005 WL 756283 (April 5, 2005)

Under federal law:

- There is a statute that allows you to apply to ATF for special permission to own a gun
- But since October 1992, Congress has prohibited ATF from spending any money to process such applications
If you submit the application, ATF will return it saying “sorry, we can’t do anything with this”

Mr. Bean objected to this and sued in federal court – to no avail


- You can still apply for a pardon under federal or state law

- Good luck
Conclusion

- “Hey, let’s be careful out there”