CLE
DEVELOPMENTS IN FIREARMS LAW
AS OF DECEMBER 2014

Kevin L. Jamison
2614 NE 56th Terr
Gladstone Missouri 64119-2311
(816) 455-2669
FAX (816) 413-0696
KLJamisonLaw@earthlink.net
www.KLJamisonLaw.com

NULLIFYING

In the last two years the Missouri legislature has been enchanted with the idea of nullifying federal firearms law. These efforts have failed. A lobbyist with a Tenth Amendment organization promoting states' rights managed to convince the legislature that he was working for the gun rights movement. He was not. He used firearms to promote his state's rights adjenda, although I am sure that he believes that he was helping the firearms movement. One cannot rely on the legislature to remember this from one session to the next. He is likely to continue this effort. The legislature has sought to nullify federal acts which are unconstitutional and hence void to begin with but has been short on defining how this is to be determined.

TRANSPORTATION

In *Black Like Me* the author disguised himself as an African American and traveled through the Jim Crow south in the 1960's. He recounted how African Americans warned travelers about the unique racial practices of towns down the road. Gun owners must do the same and have the advantage of the internet; see www.NRA.org/gunlaws or www.handgunlaws.us for summaries of local laws and states which recognize Missouri concealed weapon licenses. An astonishing number of persons have crossed state lines in blissful ignorance that their concealed carry licenses are not valid in other states. Missouri's license is valid in the largest number of states at present. The Missouri Attorney general web site has a list of states with Missouri reciprocity. THIS LIST MAY CHANGE WITHOUT WARNING. The license to carry is NOT valid on an Indian Reservation or Military base even if it is surrounded by a state with reciprocity.

A number of persons have been diverted to airports in New York State, New Jersey, Chicago or Washington DC. When they declare their gun at the ticket counter they have been arrested for possession of a firearm. So far the courts of appeals have put up with this nonsense. The theory is that federal law allows transport of a firearm in a vehicle, but when wheeling baggage through an airport one is not in a vehicle. It may be possible to go everywhere in a motorized cart but one cannot count on it.

Washington DC police have been ordered that if they find someone in possession of an empty cartridge case (without powder bullet or primer) they should investigate to see if the person has a District license for a gun of that caliber. If he does not he should be arrested for illegal possession of ammunition; the empty cartridge case.[1] The District recently convicted a businessman for attempted illegal possession of ammunition because he had a Minnie ball for a replica Civil War musket; no gunpowder, no percussion cap and no musket, only the bullet. It is not illegal to possess antique replica muskets in the District. An appeal is pending. There were no expert witnesses involved and it is possible that the judge mistook the cavity in the base of the bullet as a hollowpoint. A number of superstitions involve guns and ammunition. It is useful to consult with an expert. Police officers and federal firearm dealers are not always as expert as they think they are. In one murder case the prosecutor argued in closing that the shooting was premeditated because "everyone knew" that the slide on a semi-automatic pistol had to be drawn back by hand for every shot. The defense attorney had to make a hurried call to an expert to confirm that the recoil of the cartridge blew back the slide to reload the next cartridge.

The District has recently been ordered to enact a system whereby citizens can bear arms outside their homes. This system includes visitors to the district who have gone through the District's specific licensing procedure. It does not contemplate recognizing the licenses of other states. The author of the new law estimates that about 200 persons may qualify under the new law for a license. A review of the law indicates that this figure may be high. People who are not residents of the District are eligible for licenses, but they must pass an approved District course first. Both sides have appealed the ruling that requires a carry system. It may change without warning.

DISARMED BY POLICE

Under RSMo 21.750 a law enforcement officer cannot disarm anyone

[1] Miller; Emily *Emily Gets Her Gun*, Regnery Pub Inc NY 2013 Appendix B.

carrying a concealed or unconcealed firearm absent "reasonable and articulable suspicion of criminal activity." This is likely to create problems when police respond to ambiguous situations and start by disarming all persons present. If this were to be reviewed by a court I would imagine it would give wide latitude to the officer on the grounds of "officer safety." It is unwise to make an officer's job more difficult or stressful than it already is. No one wins the constitutional argument during a police stop. I advise clients to comply with the officer's demand to disarm and to be excruciatingly polite. If this does not resolve the situation, it plays better in court.

POST OFFICE

Under federal law, guns cannot be taken into federal facilities except for "hunting or other lawful purposes.[2]" Most federal facilities are content with guns locked in the car. The Postal Service has a much more expansive policy. They have claimed regulatory authority through the parking lot and even to the public sidewalk beyond.

The federal statute defines a "facility" as a building or part of a building owned or leased by the federal government.[3] The Postal Service regulation brazenly expands this law designed to ban weapons inside a building to the parking lot outside.[4] The Postal Service is adamant that this makes driving into the parking lot with a gun anywhere in the car a federal crime; albeit a misdemeanor. The Postal Service has their own police force and one would expect a great number of cases on this point.

Clarence Paul Dorosan needed to go to the Post Office as badly as any man ever did; he worked there. At some point the boss learned that he had a handgun in the car. Many persons rely on the weapon being *concealed* to prevent consequences. Mr. Dorosan's case is one of many proving that this reliance is not 100% effective. The consequences include loss of a job, loss of a concealed weapons license, and the addition of a criminal record and jail time.

Mr. Dorosan was charged in the United States District Court for the Eastern District of Louisiana. He was convicted; so much for the belief that good old boys let such things slide. He appealed stating that the regulation

---

[2] 18 US Code §930.

[3] 18 US Code § 939 (g).

[4] 39 C.F.R. §232.1(1).

violated his Second Amendment rights under the *Heller* decision. In a perfunctory one-page decision the Fifth Circuit Court of Appeals ruled that it did not. The court ruled that the Postal Service owned the parking lot and as the property owner could make such rules and "moreover" it was a "sensitive place" and thus subject to such rules. The argument that the Postal Service is simply a property owner is weak. Government agencies only have the authority they are given by statute. Different government agencies have different weapons rules for property they control.[5] These rules are sometimes inconsistent. The National Park Service is required by statute to allow concealed carry in the National Park under the same conditions as in the state surrounding the park. However the National Park Service does not allow weapons in buildings *in* the National Park. This discrepancy and other regulations are questionable. An agency cannot prevent exercise of a constitutional right without a compelling need to do so.

The compelling need claimed by the Postal Service is that the employee parking lot used by Mr. Dorosan is also used to load mail and stage mail trucks. The court reasoned that this made it a "sensitive area.[6]" The *Heller* decision allows the government to ban weapons in "sensitive areas;" such areas have not been adequately defined. Because the "sensitive area" in question was a segregated area of the Postal Service property the case may not affect customers in the public parking lot. For unknown reasons the court stated that the case should not be published or used as precedent.

The Mountain States Legal Foundation has filed a civil suit to overturn the Postal Service regulation.[7] Mr. and Mrs. Bonidy live in a rural area without postal delivery. They must pick up their mail at the post office. For self-defense they have permits for concealed carry. While leaving their guns in the car might not be noticed, they prefer not to break the law. The original petition was based on the regulation being overbroad. Both sides of the lawsuit agree that Postal property is federal property. This places the property

---

[5] These rules should be in hand and in writing when on federal property. They can be found on agency web sites or the code of federal regulations.

[6] *United States of America v Dorosan*, No. 08-31197 United States Court of Appeals, Fifth Circuit. The court in a footnotes stated that the opinion should not be published and is not precedent. Author has a copy.

[7] *Bonidy v United States Postal Service* 10-CV-02408-RPM in the US District Court for Colorado.

within federal jurisdiction for *Heller* purposes and allows the Postal Service to claim that it is a "sensitive area."

The court ruled, on 9 July 2013, that guns could be left in cars in the Post Office parking lot, but they cannot be taken into the building. Both sides have appealed. Arguments were heard in the Tenth Circuit Court of Appeals on 1 October, 2014.

FEDERAL LAND

National Parks must allow concealed carry in National Parks under the same rules as the state surrounding the National Park; but not into buildings *on* the National Park.

Many have confused Corp of Engineer land with National Parks, with legal consequences. Corp regulations restrict the possession and use of firearms on Corp land; 36 C.F.R. §327.13. On 13 October, 2014 the US District Court for the District of Idaho found this unconstitutional in *Morris and Baker v U.S. Army Corps of Engineers* 3:13-CV-00336-BLW. The US District Court for the Northern District of Georgia came to a different decision on 18 August, 2014 in *GeorgiaCarry.org Inc v U.S.Army Corps of Engineers*. 2014 WL 4059375. Further festivities are expected.

Clients should consider 18 U.S. Code §930 which prohibits firearms on federal *facilities* except for hunting or other lawful purposes. Federal agencies interpret this statute over-broadly claiming that as "owners" of the land the agency may issue such regulations as it pleases.

SCHOOL PROTECTION OFFICER

Missouri now has a School Protection Officer system by which teachers or staff can qualify to carry guns in school; RSMO 160.665.

The law requires that the school district hold a public hearing before establishing this program. Applicants would have to pass a training program established by the Peace Officers Standards and Training commission under RSMO 590.200.

CONCEALED CARRY LICENSE

AMMUNITION REQUIRED

The bill requires that the license to carry course only require a familiarization course of twenty (20) rounds from either a revolver or semi-

automatic. Students need only qualify with one type of handgun. The qualification course is also twenty (20) rounds and must hit the silhouette portion of a B-27 target with at least fifteen (15) rounds. This reduces the amount of ammunition required for qualification.

LICENSE TO CARRY ISSUED BY SHERIFF

Licenses were originally issued by the Department of Revenue. The Department provided the list of licensees to an outside contractor and the federal government in violation of two sections of the law. So, did the Missouri Highway Patrol. Neither agency saw anything wrong in what they had done. Licensees, who had been assured of privacy, were angry. The legislature was angry. The responsibility for issuing licenses was abruptly changed to the county sheriff. This was so abrupt that no standard license was issued for about a year. Licenses do not usually have photos and must be carried with state photo ID. Licenses issued after the change are valid for five years. This does NOT change the expiration date of licenses issued before the change. This has the result of seeing some variation in design of licenses for the next few years.

VALID

Concealed Carry Licenses are valid for five (5) years. They expire on the last day of the month in which they were issued instead of the day on which issued.

INSTRUCTORS

A certificate of training by person qualified to be an instructor is valid in all counties of Missouri and the City of St. Louis if the instructor has paid ten dollars to the sheriff of his county to be on a statewide approved list. This only requires a single ten dollar payment to the sheriff of the instructor's home county in order to provide instruction anywhere in the state or to persons from anywhere in the state.

There must be one instruction for every forty (40) students in a classroom and one instructor for every five (5) students on the firing range.

QUALIFIED FOR A LICENSE TO CARRY

Age

The bill reduced the age for a license to carry to 19. As I understand it one legislator demanded that the age be raised to 25 and the rest of the legislature pushed the other way. Persons under the age of 21 cannot purchase handguns from Federally Licensed Dealers under federal law. They can purchase from private parties or receive handguns as a gift. They should be aware of “strawman sales” regulations; see below.

An applicant must be 19 years of age, 18 if a veteran or in the armed forces. This reduction in age is likely to cost us reciprocity with other states. Travelers are strongly warned to check the reciprocity web sites before crossing state lines. At this time Illinois is the only bordering state which does not recognize Missouri's license. THIS MAY CHANGE WITHOUT WARNING.

ALIENS

An applicant for a concealed carry license must be an American citizen or person with permanent residency. Citizenship is proved with a birth certificate, passport or certificate of naturalization. A sample certificate of naturalization can be found at www.uscis.gov. A permanent residency card issued by Citizenship and Immigration Services is often called a "Green Card "but it may or may not be green. It will have a photograph of the person and date of issue. A sample may be seen at www.uscis.gov. They must be renewed every ten years, however this requirement is only to get a new photograph for the card. An out of date card has never been the basis for revoking permanent residency to my knowledge. I have seen cards that were 30 years out of date joyfully renewed by USCIS with a new photo, fingerprints and background check. If the background check turns up a criminal record the person may be arrested and placed in deportation. In an abundance of caution the alien could do an on-line check with the Missouri Highway Patrol to see a if there are any red flags. If the person has purchased guns through a licensed dealer and passed a NICS check there are no worries.

Illegal aliens cannot possess firearms under any circumstances. Under federal law a person legally, but temporarily, in the United States cannot possess firearms of any kind 18 U.S.C. §922(d)(5) and (g)(5). The few exceptions are at 18 U.S.C. §922(y)(2) which allows nonresident legal immigrants to possess guns if on a hunting visa or in possession of a hunting license. There is no such thing as a hunting visa. A tourist visa with some

sort of hunting endorsement may be possible but I have never seen one. This does not specifically apply to target shooting, so if the Olympics were held in the United States it is arguable that the competitive shooters might be in violation of the law. It does allow exceptions for “sporting” purposes. Target shooting is a sport. Casual “plinking is considered a sporting pastime by shooters, but this view is not universally held. The law does not require that an alien in possession of a hunting license to be hunting in order to fall within the exception. This law was reinforced by executive order in 2001 in an effort to prevent terrorists from driving airplanes into buildings and setting off bombs.

CARRY WITHOUT LICENSE

Persons may carry concealed, loaded handguns (handguns only) anywhere in the passenger compartment of the vehicle; even on their person. The person must be nineteen (19) years old, eighteen (18) if a member of the armed forces or honorably discharged veteran.

OPEN CARRY

A number of persons have been convinced that the defining issue of the Second Amendment is the open carry of firearms. They do so to communicate that guns are owned by everyday people. This is symbolic speech but there have been frequent complaints. Police are called. When they arrive the open carry activists appear to believe that the Constitution REQUIRES them to be jerks. They refuse to give their names to law enforcement and lecture the officer on the law, being very specific that the officer does not know his job. This does not win friends and influence people. Open carry has always been legal under state law. Many cities have passed ordinances against open carry. Kansas City’s City Council separately but equally declared that open carry "Sends the wrong message." This appears to be deliberate suppression of political speech. However courts have not agreed. In *Shawn Northrup v City of Toledo Police Division, et* al, 3:12-cv-01544 United States District Court for the Northern District of Ohio, Western Division dated 30 September, 2014, the City’s motion for summary judgment was granted in part specifically ruling that open carry is not symbolic speech. In *City of Cape Girardeau v Joyce*, 884 S.W.2d 33 (Mo. App E.D. Southern Division 1994) the court found that an ordinance against open carry was Constitutional under the Missouri Constitution. There has been a great deal of constitutional law since 1994 and the issue may be ripe

for re-examination.

The new statute allows open carry, even in cities with ordinances against open carry, but only if the person has a license to carry concealed weapons. It doesn't have to make sense, its just the law. Persons with a license to carry concealed must show their license to law enforcement on request, under any circumstances. This helps police officers fill out their reports when called to an open carry demonstration.

There is a practice called “SWATing” in which people are encouraged to call the police whenever seeing a person with a gun; sometimes with imaginative and demonstrably false embellishments. At least one person has been killed. This game may give rise to lawsuits against frivolous callers.

INTOXICATED WITH A GUN

Intoxicated with a gun covers drugs as well as alcohol. This is an important point and shall be revisited shortly. The definition of intoxicated at RSMo 571.010 is substantially impaired either mentally or physically. It does not use the .08% blood alcohol standard of the DWI law. However the .08% standard has been introduced in every drunk with a gun case I have seen reported since it became a felony in 2003. In one case refusal to take the breath test was used as evidence of intoxication just as it would in a DWI case. In my personal experience, however, law enforcement frequently neglects to do a breath test for several hours following the arrest. This makes the test useless for determining intoxication at the time of the arrest although it is impossible to convince prosecutors of this. The difference in the DWI and weapon statute standard has not been an issue, yet

A man in the bootheel was given the wrong medication by the VA hospital. He passed out from the effects. His wife called an ambulance; a deputy sheriff showed up with the ambulance and claims to have found a loaded handgun on the man's lap. The man and his wife insist that it was kept on a table nearby. The pistol and two other guns locked in a safe were confiscated. When the man demanded the return of his property he was charged with felony possession of a gun while intoxicated (prescription medication). His public defender moved to dismiss based on the *Heller* ruling that one has a Constitutional right to possess guns in one's home. The trial judge agreed. The case went to the Missouri Supreme Court which ruled that drunks are dangerous and they do not have the right to possess guns at home; *State v Richard,* 298 S.W.3d 529 (Mo. 2009). Since one can be legally drunk with a very small amount of alcohol the law was changed to say that the person must be:

1. drunk
2. armed
3. stupid.

It is not a crime unless one possesses the gun in a negligent or unlawful manner.

PUBLIC HOUSING

Under RSMo 571.510 no public housing authority can prohibit an tenant or guest from personally possessing firearms in an individual residence, common area, or from transporting firearms to and from a residence. Public housing authorities have been losing cases on this point for many years. This does not discourage them.

NEW STATE CONSTITUTIONAL PROVISION

A referendum on 5 August, 2014 changed Missouri's Constitution at Article I Section 23 to state:

> That the right of every citizen to keep and bear arms, ammunition and accessories typical to the normal function of such arms, in defense of his home, person, family and property, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.

This is the strongest state guarantee in the country. An open carry

activist in St. Louis claims that the amendment abolishes laws against open carry. The Lt. Governor's Office sent an e mail to a constituent advising that the amendment authorizes expungment of non-violent crimes. No legal memo accompanied the e-mail. By itself, the amendment does neither. It could very well be the basis of legal action to accomplish these goals but it does not end firearm regulations. Any such regulations are subject to strict scrutiny. It appears that the Attorney General must defend against further federal restrictions.

On 1 April, 2014 Marcus Merritt filed *State v Marcus* with the Missouri Supreme Court. Mr. Marcus had been convicted of illegal distribution of PCP in 1986 and in 2013 was charged with three counts of illegal possession of a firearm. He claims that the charge violates his constitutional right to keep and bear arms. The case was removed from the oral argument docket for additional briefing after the Missouri Constitutional Right was amended. Argument was heard on 8 December, 2014. If successful, Mr. Marcus may only change prisons. The federal law against firearm possession by any felon remains in effect.

On 24 September, 2014 a petition was filed to invalidate the vote adopting this amendment. The petition, filed in the Circuit Court of Cole County, is 14AC-CC00501. The plaintiffs argue that the ballot language was insufficient in that it did not say there was already a state constitutional provision protecting the right to own guns. As of 1 December, 2014 no hearing has been scheduled.

COMMON QUESTIONS

Truckers

There is no law prohibiting interstate truckers from possessing firearms; if otherwise legal. They have been told otherwise. There is no such law or regulation.

Expungement

I have an article on the subject at www.KLJamisonLaw.com in the "Gunshow Lawyer" area.

Muzzleloading Guns

It is often asked if felons may possess muzzle loading guns. If the

gun is a replica of an antique it is legal under federal and Missouri law; even if it is a handgun. There are modern muzzle loader designs which do not appear to be legal for felons. Many states do not allow felons to possess muzzle loading guns. Before crossing a state line this should be researched by a lawyer. Many police officers and gun dealers have given bad advice.

Denial by NICS

The National Instant Check System does background checks on all sales by Federal Firearm Dealers. It has access to records that will deny a person the right to buy guns for criminal, mental, addiction or protective order reasons. Private parties do not have access to the system. Some of these records are wrong. I have seen two judges denied by NICS because their name was used by a prohibited person or identifying information was similar. An old arrest may not have a disposition listed in the computer.

The firearms dealer will not be told why the person is denied. The denied person must get the transaction control number from the dealer. NICS may be contacted through their website and will respond with the reason for denial; www.fbi.gov/nics-appeals. It may be necessary to go through old court files to determine if the denial had any basis. An astonishing number of persons do not remember old convictions.

If the denied person has identifying information similar to a prohibited person NICS has a Voluntary Appeal Program. Details are on the NICS website. This requires fingerprints to be submitted to NICS and will prevent future problems.

Denial of Concealed Carry License

Denials can be appealed to the county Small Claims Court. The Sheriff is always the defendant. Very often licenses are denied because the applicant has a Suspended Imposition of Sentence. This is interpreted as disqualifying a person for a license. It is possible to get an out of state license which is valid in Missouri. Clients have successfully received Arizona licenses through the mail; see their website at www.azdps.gov/services/Concealed_Weapons/

Prohibited Family Member

Radio personality G. Gordon Liddy was quoted as saying that as a convicted felon he cannot possess firearms but his wife does, and keeps

some on his side of the bed. One hopes that this is merely public relations to deter visits by unpleasant persons. A felon with such access to firearms can be imprisoned for being a felon in possession under the theory of "constructive possession". Persons providing firearms to felons can also be imprisoned. It would be a terrible thing if either Mr. or Mrs. Liddy were arrested, but not everyone holds this opinion.

Ex-felons are not the only prohibited category.[8] Many families have suffered through a member's alcohol or drug addiction, probation or parole, dishonorable discharge,[9] psychiatric episode, indictment for a felony, an adult abuse order and even non-resident aliens.[10] One notable exception is the 26 April, 2005 U.S. Supreme Court ruling in *Small v. United States*. The Court ruled that foreign convictions are not convictions for the purposes of federal gun laws.[11] Mr. Small was convicted in Japan for illegal possession of firearms. The Court was concerned that Mr. Small did not have any meaningful access to his attorney, whose involvement in the case seemed limited to urging a guilty plea. Authorities testified at trial that this was common in Japanese courts.

Persons on parole or probation have a unique problem as they are considered to still be in prison although a very large and lightly supervised institution. Because of this legal fiction, regulations can be restrictive, to the point of absurdity. Typically the rules for persons on probation or parole are in a booklet however the probation officer can add or subtract to them. Any alteration must be requested in writing, this avoids misunderstandings. One Missouri parolee was a week away from the end of his parole when he was seen having dinner in a bar and grill. He was never shown to have consumed alcohol, however his parole officer did not remember giving him permission to enter restaurants that served alcohol, and he went back to prison.[12] An avid hunter who had been convicted of a felony asked his attorney if he could still bow-hunt, he was assured that he could but the probation and parole officer conducting the pre-sentence investigation told him that a bow was "the same thing as a gun". Reflecting on his lawyer's

---

[8] See 18 U.S.C. section 922(d) and (g). Congress felt so strongly on this point that it made it law twice.

[9] This is different from a general or bad conduct discharge, it is the military equivalent of a felony.

[10] Non-resident aliens, those without permanent residency or "Green Card" can possess firearms only under very limited circumstances.. It would be unwise to have the foreign exchange student join a shooting event.

[11] State courts may take a different view.

[12] The specific experience of one of my clients, and the general experience of many.

advice the defendant ventured that this did not sound right. Based on this conversation the officer reported to the judge that the defendant believed himself to be above the law and advised a lengthy prison sentence. This raving idiot is not only allowed to meddle in people's lives, but required to do so as part of her job.

Prohibited persons are prohibited from having access to firearms, ammunition, or bullet proof vests. It may seem improbable that guns on Mr. Liddy's side of the bed would ever come to the attention of the police; however, such things do occur. Fires, medical emergencies, and the like often attract police attention. In 1998 a gentleman in Pennsylvania slept too deeply to hear his telephone. Worried neighbors called the police who, in waking the man up, saw that he owned semi-automatic firearms. The responding officer decided that this, coupled with refusal to answer the telephone, indicated insanity and he was dropped off at a mental ward. He was quickly found to be sane, but his brief stay was described as a "commitment" which prohibited possession of firearms.[13] An ex-felon in Cedar Rapids, Iowa found a .22 cartridge in his new apartment, which he tossed in a box of miscellany. Police investigating an argument entered the apartment, and of all the objects in the room, noticed the .22 cartridge; for which the ex-convict became a new convict and did fifteen years.[14] No matter how innocent the possession, the prohibited person can expect to be prosecuted. One ex-convict migrated to San Francisco. He had the misfortune to be at a party when home invaders threatened the guests. The ex-convict disarmed one invader and routed the rest, saving five lives. For this heroism he was subsequently prosecuted for being a felon in possession of a handgun.[15] It doesn't have to make sense, it's just the law, or so people seem to think.

It should be noted that the federal law prohibits *possession* by a prohibited person. Such a person may *own* a firearm as long as they do not have physical access to it. This allows prohibited persons to transfer a gun to their lawyer as part of a legal fee.[16]

In order to support a conviction, the prohibited person must know that a firearm is present; "the dominion and control must be knowing; mere

---

[13] A gross misstatement of law, but such gross misstatements are often the resort of bureaucrats seeking to restrict rights.

[14] *U.S. v Yirkovsky*, 259 F.3d 704 (8th Cir 2001).

[15] "SoMa loft hero held on parole violation" San Francisco Chronicle 26 August, 2001. It should be noted that he was prosecuted in state court, one of the few times federal prosecutors showed more tolerance than their state counterparts.

[16] Or so I have found, although I have occasionally had to sue to enforce the contract.

proximity or accessibility to contraband is not enough".[17] This issue frequently arises from unfortunate selection of traveling companions. The Eighth Circuit ruled, "We have repeatedly stated that mere presence as a passenger in a car from which the police recover contraband or weapons does not establish possession." This sounds encouraging but as a practical matter a prohibited person found in proximity to a firearm will cause no end of suspicion. One gentleman was arrested for illegal possession of three firearms. The court ruled that he was not in constructive possession of the handgun in his wife's purse ruling "Constructive possession is ownership, dominion, or control over the item itself or control over the premises in which the item is concealed. Although a defendant's exclusive occupancy of a place may establish his dominion and control over an item found there, his joint occupancy of a place cannot, by itself, support the same conclusion."[18] The court reasoned that no evidence indicated the guest of honor's knowledge of his wife's gun. When the police entered the room he admitted to the presence of only two guns. The court believed that this indicated he did not know about the third gun. Of course he was a drug user and may have miscounted. Note the court's use of the waffle term "by itself". Other facts may support a conviction, even thin facts. It may amount to the statement of a felon trying to bargain his way out of charges. In a recent case the police informant stole a shotgun and concealed it in the home of another person "Because he didn't want to get caught with it." The court ruled that this informant's claim that the defendant knew the gun was concealed in his home was enough to support a conviction.[19] Missouri has found that "Constructive possession occurs if one has power and intent to exercise dominion or control over the substance either directly or through another person."[20] The cases on constructive possession can be summarized by the *Gilbert* case where the guns were in the home of Mr. Gilbert's estranged wife. There was evidence that he knew about the guns, which were either in a locked closet or concealed from view. The court ruled "Constructive possession exists when a person does not have actual possession but instead knowingly has the power and the intention at a given time to exercise dominion and control over an object."[21]

In order to prevent misunderstandings leading to incarceration there must be a physical barrier between the prohibited person and a firearm.

---

[17] *U.S. v Garner*, 396 F.3d 438 (Ct. App. D.C. Cir. 2005) at 443.
[18] *U.S. v Houston*, 364 F.3d 243 (5th Cir 2004) at 248.
[19] *U.S. v Woods*, 2006 U.S. App. Lexis 14297 (8th Cir 2006).
[20] *State v Cushshon*, Missouri Court of Appeals E.D. 4/3/07.
[21] *U.S. v Gilbert*, 391 F.3d 882 (7th Cir 2004) at 886.

Concealment may work, but there is nothing like a gun safe with a combination known only to the legal owner to prevent misunderstandings. A complete lack of fingerprints, DNA, hair samples, or property belonging to the prohibited person in the safe will complete the security. There is official approval for this practice. Machine guns are the most regulated of firearms. Both the gun and the owner must be licensed and registered. Yet, the BATF allows specifically machine guns to be stored at the residence of an unlicensed person so long as the unlicensed person does not have access to the gun. A locked room or container is specifically approved for such an arrangement.[22]

Based on the above, one trusts that Mrs. Liddy's guns are all antiques, locked up, or merely a public relations exercise.

STRAWMAN SALES

A "Straw Sale" consists of a person buying a gun on behalf of another party, usually one who cannot legally buy for himself. The circuits were split on if it was legal to buy a gun on behalf of a person who could legally buy for him or her self. Then the US Supreme Court handed down *Bruce James Abramski v United States* on 16 June, 2014.

An elderly Pennsylvania man needed a handgun, but he wanted to save money on it. His nephew, Bruce James Abramski, was a former police officer and thought that he could get a discount from a shop in Virginia which catered to police. Two FFL dealers told him that such a transaction would be legal.[23] Uncle sent Bruce Abramski a $400 check to purchase the gun. Abramski then went to the Virginia store, passed a background check, and purchased the gun. The gun was transferred through a dealer in Pennsylvania where the uncle passed a background check and took possession of the gun.

Such transactions were considered legal in some federal judicial circuits, but not in the circuit covering Mr. Abramski. The transaction came to light when Mr. Abramski became the unlikely suspect in a bank robbery.[24] During a search of Mr. Abramski's home the receipt for the pistol was

---

[22] Q & A M23 ATF P 5300.4 (01-00) page 144.

[23] FFL dealers do not know as much law as they often think they do.

[24] Charges were dropped, not for lack of evidence but because the evidence was ridiculous.

discovered. With the passion for minutia which is the FBI the gun was traced to the uncle who paid James for the gun with a check, containing a note on the memo line saying it was for a pistol.[25] With this evidence Mr. Abramski was arrested for a straw sale.

He filed a motion to dismiss on the grounds that the federal statute does not use the term "actual buyer" only "transferee." The motion was denied. He pled guilty with leave to appeal the denial of his motion to dismiss. It did not work. The Fourth Circuit Court of Appeals ruled in favor of the district court and he was off to the U.S. Supreme Court. Because different appellate circuits had come to opposing decisions the Supremes took the case. Mr. Abramski continued his argument that his he did not misrepresent himself as the buyer since he was the person pushing money across the counter. He further argued that any misrepresentation was immaterial since his uncle was legally able to purchase a gun. He argued that the question is vague and under the rule of lenity any confusion in a statute must be interpreted in favor of the defendant. The government argued that the transaction was a "straw sale" for someone else. It further argued that 18 U.S. Code §922(a)(6) makes it a felony to make any false statement in connection with purchasing a firearm. This is true, but it does not require the buyer to identify the ultimate buyer of the gun. This doctrine is an invention of the BATF. However, as the administrative agency charged with implementing federal firearms law they are charged with creating firearms regulations. Their argument was that a false statement on a required form is a felony even if the statute did not require that specific question.

On 16 June, 2014 the Court ruled in favor of the government in a 5-4 decision. The Court agreed that the BATF had previously interpreted the statute to allow exactly this type of transaction. The Court ruled that it does not have to pay attention to the interpretations of administrative agencies. It then went on to stress that the BATF now interprets such transactions as illegal. It accepts this interpretation unquestionably. Different federal circuits had come to different conclusions but rules that Mr. Abramski and the two dealers he had consulted should have known better.

The Court found that the purpose of federal firearms laws is to determine who obtains guns from licensed dealers. The Court admitted that if someone buys a gun, walks out of the store and then decides to sell it; that is legal. The Court agreed that if someone buys a gun and gives it to another person; that is legal. The Court's reasoning was that the BATF has stated

[25] So much for people who think they fly under the radar.

that these actions are legal and given these exceptions the interpretation against straw sales must be strictly enforced.

Under this ruling, the focus is on the source of the money used to purchase the gun as well as the ultimate possessor. A person may buy a gun with his own money and give it as a gift to another party. That is legal. If someone walks into a gunshop and buys a gun with money from another person and then gives that gun to that other person, it is a crime. If someone buys a gun and then sells it to another person, that is legal. If he makes a profit on the transaction, it is still legal. Such a sale only becomes illegal if the seller makes a practice of such transactions. He is then illegally in the business of selling guns without a license. If the person goes into a gunshop with an agreement to buy a gun with his own money and sell it to the other person; that might be legal. The operative word is might. We shall not know until the next brave volunteer is arrested.

It is also against the law to sell, give or loan a firearm to a prohibited person.[26] It is legal to give a gun to a person who is not prohibited from owning a gun. However, the Abramski case makes it plain that this exemption is only by sufferance. It is a "loophole" which may be closed by administrative action.

We can expect more criminal "strawman" cases to be filed. We can expect the ATF to revoke more dealer licenses for alleged "straw" sales. Dealers are well advised to examine the National Shooting Sports Foundation's "Don't' Lie for the Other Guy program at www.DontLie.org.

Yadura Garcia of Alamo Texas claimed to have used $5,000 in Bingo winnings to purchase six "assault rifles" in August, 2013. She was inconsistent about the location of the guns when questioned. She admitted lying about her address on the federal 4473 form when she bought the guns. This is enough for a conviction under *Abramski*. She was convicted a year later. She received eighteen months on each count, sentences to run concurrently.[27]

People may continue to give guns as gifts, but should be prepared to prove that it was a gift. We are supposed to be innocent until proven guilty, but Mr. Abramski spent months in jail labeled a dangerous offender until

---

[26] The term "firearm" does not include muzzle-loading guns under federal law. However some states treat all firearms equally, including muzzle-loaders.

[27] http://www.kwtx.com/home/headlines/Texas-Woman-Convictedof-Lying-on-Assault-Rifle -Purchase-Records. 27 Oct. 2014.

allowed to make bail.

WEAPONS

Hands and Feet: On 30 September, 2014 the Eastern District Court of Appeals handed down *State v Murphy* and *State v Evans*. Evans was convicted of assault in the first degree and Murphy of murder. Both defendants had punched someone causing serious injury and death respectively. Murphy had the unfortunate nickname, "Knockout." He was stupid enough to boast of this nickname to a cellmate. Both cases hold that hands and feet are not weapons for the purpose of the Armed Criminal Action law. These cases are contrary to *State v Burch*, 939 S.W.2d 525 (Mo. App. W.D. 1997) at 530 holding that an elbow can be a force likely to produce death or great bodily harm within the meaning of the statute defining assault in the second degree. In some jurisdictions courts have found that shoes were weapons when a person was kicked. In none of these cases were the aggressors martial artists.

Contrary to popular belief there is no law or regulation registering the hands of boxers or martial artists. The Supreme Court of Minnesota found that a punch from a trained boxer was not assault with a dangerous weapon.[28] Only boxers are registered under 15 U.S.C. Section 6301, and then only to record them, identify them and license them for competition.

Switchblades: Under state law, it is no longer illegal to possess a switchblade except for federal property; RSMO 571.020.1(6). If the switchblade is on federal property it is a Class C felony. Federal law has its own ban on switchblades on federal property. May cities have ordinances against switchblades, brass knuckles and some martial arts weapons.

Brass knuckles: Brass knuckles are any "hard substance covering the knuckles. They do not have to be brass; RSMo 571.010. This definition does not necessarily cover "sap" gloves which have powdered lead in the knuckles. It does cover many rings, and some kitchen devices designed to cut vegetables and mash potatoes. Some "key rings" employ prongs which protrude between the knuckles. They have the same effect as brass knuckles, but are not covered by the definition. Under state law possession of brass knuckles is a Class A misdemeanor unless they are possessed:

---

[28] *State v Basting*, 572 N.W.2d 281 (Minn. 1997).

1. By the military, law enforcement or prison personnel.
2. In a business transaction with 1 above.
3. Incident to display in a public museum or exhibition.
4. In a lawful dramatic performance. RSMo. 571.020.2 (summarized)

Many cities have ordinances against brass knuckles, switchblades and certain martial arts weapons. These ordinances may be more restrictive than state or federal law.

Knives and Concealed Carry License: The Missouri Attorney General's Office responded to an e-mail with the statement that since Missouri has a concealed *weapons* law a person with a License To Carry could also carry a concealed knife. The e-mail is very specific that this is not an official Attorney General Opinion. Even if it was, that does not mean that it is controlling law. The e-mail exchange is at Appendix A.

GUNFIGHTS

Multiple Shots

A revolver can be fired up to four times a second and a semi-automatic from four to six times a second. This speed does not result in accuracy and is usually seen in panicked shootings. The unfortunate Mr. Diallo was shot at 42 times by three New York City detectives with semi-automatic Glock 19 pistols at point-blank range; but only hit 19 times.

If a broomstick is placed on end and allowed to fall, it will take approximately two seconds to hit the ground. In those two seconds a panicked person could fire eight to twelve rounds. Such rapid-fire is often taken as evidence of malice. One judge rules "Finally, whatever you think about the first four shots, it is unconscionable to suggest that the last two shots were fired in self-defense."[29] The judge did not question that the deceased was mobile, active and hostile during the last two shots. The argument was that the sheer volume of shots indicated malice.

On 27 May, 2014 the US Supreme Court handed down *Plumhoff et al v Rickard*. A group of police officers were in a high speed chase. The fleeing car endangered the public. The police responded by firing fifteen (15) shots into the driver. The Court ruled that this was not, by itself, a violation of the deceased rights. It found "It stands to reason that, if police

[29] *State v Thomas*, 673 N.E.2d 1339 (Ohio 1997) at 1347.

officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended."

Time and Changes

The Force Science Institute has found that in a self-defense situation the assailant can turn his back before the police officer can perceive the changed situation, process the information, instruct the trigger finger to stop pulling and transmit the information. By the time the process is complete the trigger finger will have acted on information that is outdated by milliseconds and the assailant will be shot in the back; see www.ForceScience.org.

SELF- DEFENSE

RSMo. 563.031allows defense of premises if in reasonable fear of the imminent use of "unlawful force" by another person. There is no indication of what "unlawful force" might be. The Missouri legislature continues its glorious tradition of not defining its terms. It does not mean "deadly force" because that is a specific legal term. On 8 January, 2013 the Western District Court of Appeals handed down *McAlister v Strohmeyer* WD75160. It found that Mr. Strohmeyer was justified in drawing a handgun when Ms. McAlister forced her way into his home and kneed him in the groin and slapped him across the body. He did not fire the gun. The parties were, of course, estranged lovers and the case is the appeal of her protective order claiming he threatened her with the gun. This would indicate a very low threshold for "unlawful force."

Absolute Defense

Under RSMo. 563.074 the exercise of force under the self-defense statutes is an absolute defense to criminal prosecution or civil suit. This is similar to Missouri's "Shoplifter Statute" at RSMo 537.125 which protects stores which reasonably detain persons under suspicion of shoplifting. However, one cannot simply say "self-defense" and expect the statement to be accepted without question. When Jack McCall shot Wild Bill Hickok, he claimed self-defense. Witnesses, and the primitive forensics of the day, showed the Wild Bill had been shot in the back of the head. Mr. McCall was hanged. Police continue to investigate claims of self-defense. Forensics and common sense continue to refute them.

The elements of self-defense are:

1. Did not start or provoke the fight
2. A reasonable belief for the need to kill to save oneself
3. An attempt to be all within one's power
    a. Consistent with safety
    b. To avoid deadly force[30]

On 7 July, 2009 Elijah Flores tried to rob a house, alleged to be a drug house, and did it badly. Fleeing through the neighborhood he woke Anthony Costanzo who stepped outside to investigate. Mr. Flores pointed his shotgun and Mr. Costanzo raised his handgun. Mr. Flores was badly wounded but survived to sue Mr. Costanzo and the Kansas City Police Department from prison for assault and refusing to arrest Mr. Costanzo for assault. The Kansas City Police Department quickly was dismissed out of the case, leaving Mr. Costanzo.

Mr. Costanzo filed to dismiss under RSMo. 563.074. This was granted and the statute states that the court *shall* award attorney fees. Mr. Costanzo won less than $2,000 against a man making $5 a month in prison industries.

Mr. Flores brought suit from prison *pro se.* He showed even less talent for litigation than he did for robbing houses. Mr. Costanzo was never specifically found to have acted in self-defense other than the Jackson County prosecutor's refusal to file charges.

While the statute appears to have been successfully used, it may not see equal success in claims of negligent acts leading to the self-defense case. This may require some imaginative litigation but the Bar is equal to it. A central Missouri farmer killed a burglar. He was acquitted on the grounds of self-defense. The burglar's family sued on the grounds of negligence claiming that the farmer failed to put up a "no trespassing" sign so the burglar would know he should not break into the house.[31] The homeowner's insurance company stepped in, settled the case, and canceled his policy. This was prior to the current statute.

RIGHT TO POSSESS AFTER CONVICTION

It is against federal law for a felon to possess or even have access to

[30] *State v Chambers*, 671 S.W.2d 781 (Mo. Banc 1984) at 783.

14. There was a "no trespassing" sign. I have a picture of it.

firearms, ammunition or a bullet proof vest. It does not specifically prohibit a felon from owning a firearm, only to have access or possess. The US Supreme Court has taken up *Tony Henderson v US* to determine if a person can continue to own guns after conviction. This may affect inheritance and certain trusts. It may also affect the occasional lawyer who takes his fee in guns. An opinion cannot be expected before next summer.

GUN "BUYBACKS"

The legislature has banned local governments from participating in gun "buybacks" in which the public is given anything of value for turning in guns. The only exception is if the guns are offered for sale to licensed dealers in a commercially reasonable manner. The legislature was kind enough to specify the terms of a commercially reasonable manner; RSMo 21.750.

KNOWING WHAT YOU'RE TALKING ABOUT

On 5 February 2013 the Missouri Court of Appeals handed down *State v Gregory Allan Rodgers*, WD74912. At one point the opinion refers to the defendant possessing a "Browning **.**9mm Luger." To a gun person this refers to a Browning designed Lugar pistol, and there is no such thing. It also refers to a "**.**9mm" cartridge, which is about the diameter of the wire used in paperclips. There has never been a caliber that small. I do not know where the Court received this designation. At some point someone obviously tried to refer to a Browning pistol chambered in 9mm Lugar.[32] The error made no difference to the opinion. It made no difference to the underlying crime. It might have made a difference to the third juror in the second row who would tell the other jurors that the lawyers did not know what they were talking about, and thus the rest of their case was questionable.

Calibers are stamped on a gun's chamber or barrel, which may be easily changed to a different caliber in some models. Shooters should confine themselves to the cartridge stamped on the barrel. There are exceptions beyond the scope of this article.

---

[32] Browning designed a number of pistols, rifles, shotguns and machine guns so this is still not terribly specific. There are a number of cartridges which fire 9mm bullets but are not interchangeable with the 9mm Lugar, which is also referred to as 9mm Parabellum or 9 x 19 mm.

Certain cartridges will chamber and fire in guns for which they were not intended. I had a case in which the shooter used a 10mm pistol, but left .40 S&W cartridge cases at the scene. The two cartridges are the same diameter, but the .40 is shorter. This and other cases show that the extractor may hold the shorter cartridge with enough force to withstand the strike of the firing pin. The gun functioned semi-automatically. This has also been seen in 9mm Makarov (9 x 18 mm) pistols firing .380 cartridges (9 x 17 mm). It is not recommended. Then there was the genius of hopeful physics who found that a 7.62 NATO cartridge would chamber in his 7.5 mm rifle. He tried to force a 7.62 mm object through a 7.5 mm hole with disastrous results.

Certain cartridges are essentially physically identical, but not ballistically. The .30 Mauser pistol and 7.62mm Tokarev pistol, the .308 and 7.62 mm NATO and .223 and 5.56 mm rifle cartridges chamber and fire in guns proofed for the other caliber. However the metric cartridges are loaded to higher pressures than their cousins and are dangerous to fire in guns measured in decimals.

Make and model of the gun is usually stamped on the side of the frame or receiver. I once saw a law enforcement officer confuse the make of a revolver with the town in Brazil where it was made. An ATF inspector once recorded a gun as a "Remington M700 shotgun." This gun is actually a rifle.[33]

The serial number will be on the receiver or frame of the firearm. There have been cases in which the number has been partially or completely obscured by aftermarket grips or accessories.

The markings of an importer may be important. These should be on the receiver but may be elsewhere. Guns imported prior to 1968 may not have import marks. These guns have greater value to collectors.

References

WWW.NSSF.ORG provides a free download for *The Writer's Guide to Firearms & Ammunition*

[33] This rifle is currently subject to an upgrade by Remington as part of a court settlement after repeated reports of accidental discharges when taken off safe.

Massad Ayoob Group PO Box 1477, Live Oak, FL 32064 e-mail at mas@massadayoob.com. Massad AYOOB is a retired police captain and speaks, writes, teaches and testifies on firearms and self-defense issues.

Mark Pursell 8022 N.E. 132nd St, Liberty, MO 64068 mpursell@planetkc.com (816) 560-4030. A gunsmith in Kansas City area. Some statutes require that a gun be minimally functional.

The *NRA Firearms Sourcebook* is sold, of course by the NRA store at www.NRAStore.com for $34.95. It is 534 pages of technical information. It is sold for up to twice as much on certain other web sites.

Force Science Institute www.ForceScience.org. Focuses on police use of force.

Kevin L. Jamison (816) 455-2669 KLJamisonLaw@earthlink.net , www.KLJamisonLaw.com.

APPENDIX A

On Tue, Oct 28, 2014 at 2:23 PM, Schlotzhauer, Joseph <joseph.schlotzhauer@ago.mo.gov> wrote:

Mr. Cline,

571.010(12) "Knife", any dagger, dirk, stiletto, or bladed hand instrument that is readily capable of inflicting serious physical injury or death by cutting or stabbing a person. For purposes of this chapter, **"knife" does not include any ordinary pocketknife with no blade more than four inches in length;**

571.030. 1. A person commits the crime of unlawful use of weapons if he or she knowingly:

(1) Carries concealed upon or about his or her person a **knife**, a firearm, a blackjack or any other weapon readily capable of lethal use;

….

571.030.4. Subdivisions (1), (8), and (10) of subsection 1 of this section shall not apply to any person who has a valid concealed carry permit issued pursuant to sections

571.101 to 571.121, a valid concealed carry endorsement issued before August 28, 2013, or a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state.

As such, the crime of carrying a concealed “knife” is specifically exempted for those with valid ccw permits.

Sincerely,

Joe Schlotzhauer

Assistant Attorney General

Missouri Attorney General’s Office

From: Cory Cline [mailto:coryscline@gmail.com]
Sent: Tuesday, October 28, 2014 12:09 PM
To: Schlotzhauer, Joseph
Subject: Re: Conceal carry knife

They disagree because of 571.101.1. I am told that because this specifically names firearms, it would be concluded that the exclusion in 571.030.4 only applies to the word firearm. I agree with you, but I don't want to get arrested for carrying my grandfathers knife he handed down to me. If a formal opinion is not possible, would you be willing to look over this additional section and give a personal opinion? Thanks.

On Tue, Oct 28, 2014 at 12:02 PM, Schlotzhauer, Joseph <joseph.schlotzhauer@ago.mo.gov> wrote:

Unfortunately our ability to file formal opinions is very limited by statute, so we're unable to in this situation. However, a plain reading of sections 571.010 and 571.030 should make it clear that with a valid concealed carry permit, one may conceal a blade of any length.

On Oct 28, 2014, at 11:42 AM, Cory Cline <coryscline@gmail.com> wrote:

> I have spoken with several attorneys in the area and they seem to disagree with you. Could I please have a formal opinion on this matter? Thanks.
>
> Cory S Cline

> On Tue, Oct 28, 2014 at 9:14 AM, Schlotzhauer, Joseph <joseph.schlotzhauer@ago.mo.gov> wrote:
>
> Dear Mr. Cline,
>
> Thank you for your inquiry. Attorney General Koster has asked that I respond.
>
> With a valid concealed carry permit, one may conceal a knife with a blade of any length. See section 571.030, RSMo (which you have cited). Without a concealed carry permit, one may only conceal a knife with a blade less than 4 inches.
>
> Please let me know if we may be of any further assistance.
>
> Sincerely,
>
> Joe Schlotzhauer
>
> Assistant Attorney General
>
> Missouri Attorney General's Office
>
> **From:** Cory Cline [mailto:coryscline@gmail.com]
> **Sent:** Monday, October 27, 2014 8:42 AM
> **To:** Attorney General
> **Subject:** Conceal carry knife
>
> Having read chapter 571, I have come to the conclusion that I am allowed to carry my 7" fixed blade knife on my hip covered by my jacket because I am a CCW holder. Officers I have asked seem to disagree. Please clarify. If you disagree, please cite the section that disallows it. Thanks.
>
> For convenience, I bolded the parts that apply to my conclusion.

571.030. 1. A person commits the crime of unlawful use of weapons if he or she knowingly:
