

STATUTORY ELEMENTS - ANTIQUE HANDGUNS

State of Indiana v. Andrew Gibbs, Ind. Ct. App., No. 21A01-0103-CR-216
(February 20, 2002, 8 pages).

The State of Indiana appealed the Trial Court's ruling granting the Defendant's Motion to Dismiss the criminal charge against him for carrying a handgun without a license on school property. Specifically, the State claimed that the court had ignored the plain language of the statute when it ruled that possession of an inoperable handgun could not serve as the basis of a charge against the Defendant.

The undisputed facts revealed that a school security guard was alerted to the fact that Gibbs had a handgun in his vehicle in the school parking lot. The security guard escorted Gibbs to the vehicle, and the Defendant admitted that he had an antique handgun in the trunk. The gun was contained in a gun case. When the security guard attempted to open the cylinder of the gun to determine whether it was loaded, he was unable to do so because it was jammed. The two men then returned with the handgun to the principal's office whereupon the police were contacted. The officer told police that the gun's condition made it incapable of firing a projectile.

Gibbs filed a Motion to Dismiss the charge alleging that an inoperable handgun did not meet the statutory definition of a "firearm". The Trial Court granted the motion, ruling that the device in this case was clearly not operable and therefore could not be considered a firearm within the meaning of the statute.

The interpretation of a statute is a question law which is reviewed de novo. Under such a standard, the Appellate Court owes no deference to the Trial Court's legal conclusions. Although penal statutes are to be strictly construed against the State to avoid enlarging them beyond the fair meaning of the language used, the Court is guided by the concept of giving effect to the plain and ordinary meaning of the statute.

The term "firearm" is defined as "any weapon that is capable of or designed to or that may readily be converted to expel a projectile by means of an explosion". In Manley

v. State, the Court of Appeals determined that the State is not required to prove that a handgun is operable to obtain a conviction for this offense. Rather, it is sufficient for the State to establish that the handgun was designed to expel a projectile by means of an explosion. Thus, even though the Defendant's handgun was inoperable, it was designed to expel projectiles by means of an explosion. As such, it falls within the statutory definition of a firearm and can serve as the basis of a charge of carrying a handgun without a license.

The Court noted that other jurisdictions like Florida, have a specific exception for antique firearms. In contrast, the Indiana Legislature has not provided for such an exception. Therefore, regardless of the handgun's age, if it was designed to expel a projectile by means of an explosion, then it constitutes a firearm according to Indiana law.

In an interesting policy discussion, the Court of Appeals inferred that the Legislature obviously recognized that even an inoperable gun is inherently dangerous. The Court reviewed cases highlighting a variety of risks created by the presence of even an unloaded handgun, including causing fear, and the potential for an immediate violent response. As discussed in the U.S. Supreme Court case of McLaughlin v. United States, whether a gun is operable, and/or loaded for that matter, is not generally discernable without close inspection. Thus the mere sight of a gun is "sufficient to provoke a fearful response from the average citizen, who is very unlikely to wait to determine the weapon's operability before reacting in a panicked or violent manner". Accordingly, the State was not required to prove that the handgun was operable as part of its prima facie case and the Trial Court thus erred in granting the Defendant's Motion to Dismiss.