

Friday, August 17, 2007

Breathing life into the justification defense.

Bill of Rights. (From the public domain.) A convicted felon confronts a handgun being waved in his face. He disarms the gun wielder, and acts as expeditiously as possible to turn the gun over to the police. He has been confronted by Hobson's choices: (1) either seize the handgun and face violating the federal law against felons' possession of firearms, or risk being killed by the gun wielder; and (2) either turn the gun over to the police, who might then seek a prosecution for the convicted felon's possession of the handgun (which is what happened), or risk being discovered keeping the handgun or hiding it. Suffering from the maxim that no good deed goes unpunished, John David Mooney is the convicted felon who disarmed a gun wielder, and testified that he moved as expeditiously as possible to turn the gun over to the police. Along the way, and after the police arrested him for possessing the handgun, Mr. Mooney's lawyer mis-advised him that a justification defense was not available to defendants charged in federal court with being felons in possession of firearms. Having a reputation for being one of the nation's most conservative federal appellate courts, the United States Court of Appeals for the Fourth Circuit found that a justification defense was available to Mr. Mooney. The court found that Mr. Mooney's attorney provided ineffective assistance of counsel for telling Mr. Mooney that such a defense was not available, and granted Mr. Mooney a retrial. *U.S. v. Mooney*, ___ F.3d __ (4th Cir., Aug. 6, 2007). Mr. Mooney was indicted (see the indictment here) and convicted for violating 18 U.S. Code § 922(g)(1), which prohibits "anyone who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year" (it is the maximum available imprisonment that matters, not the incarceration term actually received) "to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." Mr. Mooney was sentenced to the fifteen-year mandatory minimum prison term applicable to those found to have three previous applicable convictions "for a violent felony or a serious drug offense, or both" under 18 U.S. Code § 924(e)(1). Subsequent to losing his pro se attempt to reduce his sentence (see Mr. Mooney's pro se motion here), Mr. Mooney filed a habeas corpus petition alleging ineffective assistance of counsel for his attorney's having told him that a justification defense was not available to him. Starkly contrasting Mr. Mooney's trial lawyer's assertion of the unavailability of a justification defense, Mooney points out: "Every circuit to have considered justification as a defense to a prosecution under 18 U.S.C. § 922(g) [which is the statute under which Mr. Mooney was prosecuted] has recognized it. See *United States v. Leahy*, 473 F.3d 401, 409 (1st Cir. 2007); *United States v. Deleveaux*, 205 F.3d 1292, 1297 (11th Cir. 2000); *United States v. Gomez*, 92 F.3d 770, 774-75 (9th Cir. 1996); *United States v. Paoello*, 951 F.2d 537, 540-41 (3d Cir. 1991); *Singleton*, 902 F.2d at 472 (6th Cir. 1990); *United States v. Vigil*, 743 F.2d 751, 756 (10th Cir. 1984); *Panther*, 688 F.2d at 271 (5th Cir. 1982); *United States v. Agard*, 605 F.2d 665, 667 (2d Cir. 1979)." Mooney, ___ F.3d __. Remarkably, the Fourth Circuit acknowledged that this Mooney case represents the first time it has applied the justification defense. The court's application in this instance flowed from its following statement: "To recognize, in particular, the justification defense to the felon-in possession offense is not remarkable. 'Common sense dictates that if a previously convicted felon is attacked by someone with a gun, the felon should not be found guilty for taking the gun away from the attacker in order to save his life.' *United States v. Singleton*, 902 F.2d 471, 472 (6th Cir. 1990)." The Court reiterated its four-prong test "for evaluating the merits of a justification defense to a felon-in-possession charge under § 922(g)," which provides that "to be entitled to the defense, a defendant must produce evidence at trial that would allow the fact finder to conclude that he: '(1) was under unlawful and present threat of death or serious bodily injury; (2) did not recklessly place himself in a situation where he would be forced to engage in criminal conduct; (3) had no reasonable legal alternative (to both the criminal act and the avoidance of the threatened harm); and (4) [that there was] a direct causal relationship between the criminal action and the avoidance of the threatened harm.'" [*U.S. v. Crittendon*, 883 F.2d [326] at 330 [(4th Cir. 1989)]; see also [*U.S. v. Perrin*, 45 F.3d [869] at 873-74 [(4th Cir. 1995)].] Mr. Mooney's victory is all the more remarkable by having been won not by a longtime attorney, but by a recent law school graduate, Meghan Poirier, who argued the case just days after graduating law school, and now awaits her bar exam results. This article about Ms. Poirier's tenacity and passion for her client's cause is inspiring. For any reason the prosecution successfully seeks en banc review of this case by the Fourth Circuit, it will be interesting to see if the military -- which is Ms. Poirier's employer -- will enable her to continue advocating on Mr. Mooney's behalf. Jon Katz. ADDENDUM: Thanks to a fellow listserv member for bringing to my attention the above-discussed article about John Mooney and his lawyer Meghan Poirier.

Posted by Jon Katz in Criminal Defense at 00:01