

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1337

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Halligan
Operator's Signature

10/3/03
Date

2003 HOUSE JUDICIARY

HB 1337

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallworth 10/3/03
Operator's Signature Date

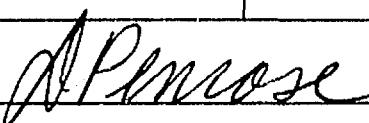
2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1337

House Judiciary Committee

Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2		xx	0-27
3	xx		49.3-52.7
Committee Clerk Signature			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1337.

Rep. Iverson: Introduced the bill. Support. I will amend line 8, after the word upon, take out the word conviction and change to plea of guilty, finding of guilty, or a verdict of guilty. I will draw up the necessary amendments for the committee.

Chairman DeKrey: Thank you.

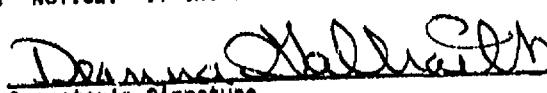
Rep. Eckre: This also talks about the other civil rights, why don't you list the other civil rights.

Rep. Iverson: I don't know. We wanted to aim this specifically at the gun rights. We could include the other rights, if you wish.

Rep. Eckre: If you are only talking about the gun rights, why does it say "loses all civil rights, including the right to bear arms".

Rep. Iverson: I believe Mr. McCabe can answer that.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.


Operator's Signature

10/3/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1337
Hearing Date 2-11-03

Rep. Delmore: Knowing that domestic violence is the #1 cause of death, a misdemeanor, how serious would it have to be with weapons before he would be charged.

Rep. Iverson: If someone is determined, they will go ahead and commit felonies by killing their spouse. There is nothing we can do to stop that. Now if somebody commits a misdemeanor, they go through counseling, etc. I don't think someone who is a policeman or a National Guard, someone who has to use a firearm in the execution of their job, they should not lose their gun rights, lose their ability to do their jobs because of it.

Rep. Delmore: If someone is charged with a misdemeanor w/weapon, that had used it as a threat, and if the gun is given back to that person, aren't we then saying you can carry this to the next step, if we give the gun back.

Rep. Iverson: If that person is determined to do this, there is no law we can pass that's going to stop them. This is aimed at the individual who has had an argument with his wife, it goes too far, but they lose all their gun rights.

Rep. Delmore: A misdemeanor would never lead to a felony.

Rep. Iverson: I am not going to say. I don't know.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1337.

Chad McCabe, attorney: (see attached testimony) Support. If you are found guilty, you lose your core civil rights. That isn't right that you can't get them back.

Rep. Eckre: What are the other civil rights.

Mr. McCabe: We didn't want to list them. The only way to rectify the situation, is to take away the civil rights at the state level upon a plea of guilty, finding of guilty, or a verdict of guilty.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.


Dennis Hollsmith
Operator's Signature

10/3/03
Date

Page 3

House Judiciary Committee
Bill/Resolution Number HB 1337
Hearing Date 2-11-03

Then you lose the core civil rights. Then restore them upon sentencing, and then you will keep your federal rights to bear arms.

Rep. Eckre: I wanted them just so that I would know.

Mr. McCabe: Basically, this bill is telling the federal courts to stay out of ND. You are trying to monkey with our system, and we're trying to tell them "look we fixed it, stay out of our business". If we say which civil rights, they could play games with us, and say well you didn't say this civil right, you didn't say this civil right, so I would really prefer this to say loss of civil rights, that person upon sentencing, which is generally within seconds of having been found guilty, that person will then be restored their civil rights. For 99% of the people this is not going to be anything at all. It's just going to be something that can protect us, to keep our federal gun rights in ND. There are situations, usually felonies though, where people have a conviction and then sentencing is at a later date.

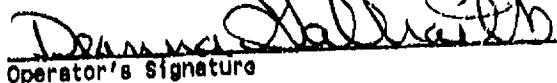
Rep. Eckre: I wanted to know the law. Your political, personal, civil, etc. rights.

Mr. McCabe: If it is a misdemeanor assault that includes violence, you actually do lose your gun rights under ND. I am talking about simple assault, class B misdemeanor, a little assault. Those are the ones where you don't lose your gun rights, you do lose your gun rights if it a class A misdemeanor assault, not defined as a simple assault. Aggravated assaults which are felonies.

Rep. Delmore: I have a problem with the term simple assault. This says "all misdemeanors", how far can you go and still be a misdemeanor?

Mr. McCabe: The prosecutor makes the decision as to what to charge the person. But I don't want to lose federal gun rights because of this simple assault.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.


Dennis Hallmark
Operator's Signature

10/3/03
Date

Page 4

House Judiciary Committee
Bill/Resolution Number HB 1337
Hearing Date 2-11-03

Rep. Delmore: How far can I carry an assault, and still be charged with a misdemeanor instead of a felony.

Mr. McCabe: If it is bodily injury, serious bodily injury under chapter 12.1, various degrees of injury - the prosecutor decides what to charge the person.

Rep. Klemin: If convicted of major felony - you are prohibited from owning a firearm or having one in your possession for 10 years after the date of your conviction or release from prison; or a class A misdemeanor involving violence while using firearm, you lose your gun rights for 5 years. Are you saying that if you are convicted of a class B misdemeanor involving domestic violence that you are prohibited from possessing a firearm forever.

Mr. McCabe: Under chapter 62, the only way you can lose your firearm rights is if it was either a felony or a misdemeanor including violence. If it is a class B misdemeanor, then you do not lose your gun rights under North Dakota law.

Rep. Klemin: You said a class B misdemeanor, you don't lose your gun rights. I thought that is what the premise was, for simple assault, a class B misdemeanor involving domestic violence, you do lose your guns rights.

Mr. McCabe: You don't lose your gun rights under state law, you lose your gun rights under 18 USC 921, which is a federal law. The federal law says if you plead guilty to a misdemeanor crime of domestic violence, you lose your federal gun rights, and the only way that we will give them back to you, is if the state takes away your core civil right, and then restores them, and because ND doesn't take them away, they cannot be restored according to these federal cases. So with this bill I am asking you to take them away for a very brief moment in time and then restore them and that way we've complied with the federal code.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallsmith
Operator's Signature

10/3/03
Date

Page 5
House Judiciary Committee
Bill/Resolution Number HB 1337
Hearing Date 2-11-03

Rep. Wrangham: Is this weakening any state laws out there at this time. If I committed a violent misdemeanor in ND, I would lose my rights.

Mr. McCabe: Yes.

Rep. Wrangham: This bill would not affect whether I would lose them, or when I would get them back. If you lost your gun rights in ND, you would get them back under federal law.

Mr. McCabe: Yes. I am talking about offenses where you don't lose your gun rights under ND law, where you plead guilty, but don't lose gun rights.

Rep. Wrangham: Under present law, if I commit an assault, simple assault, just a misdemeanor I do not lose my gun rights in ND. Is that correct?

Mr. McCabe: You don't lose them under ND law, you lose them under federal law.

Rep. Delmore: Why you did not put a non-violent misdemeanor in the bill, if that was your intent. (then read the meaning of simple assault) There is no limit there as to how violent that has to be. I would assume that is left up to someone who charges, that would give them a great deal of latitude.

Mr. McCabe: If there is bodily injury greater than what you have just defined, then the person would not be charged with simple assault. You would be charged with a felony.

Chairman DeKrey: Thank you. Further testimony in support? Testimony in opposition.

Linda Isakson on behalf of Bonnie Palacek, ND Council on Abused Women's Services:
(see attached testimony). Opposed.

Chairman DeKrey: Thank you. Any further testimony in opposition? We will close the hearing. (Reopened later in the afternoon session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1337.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallsmith 10/3/03
Operator's Signature Date

Page 6
House Judiciary Committee
Bill/Resolution Number HB 1337
Hearing Date 2-11-03

Rep. Delmore: I move a Do Not Pass.

Rep. Eckre: Seconded.

12 YES 1 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Galvin

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dawn Hallworth
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 1:21 p.m.

Module No: HR-27-2410
Carrier: Galvin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1337: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1337 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-27-2410

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallworth 10/3/03
Operator's Signature Date

2003 TESTIMONY

HB 1337

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dorraine Hallmark 10/3/03
Operator's Signature Date



VINJE LAW FIRM

523 NORTH FOURTH STREET, SUITE 3
BISMARCK, NORTH DAKOTA 58501

TELEPHONE: (701) 258-9475 FAX: (701) 258-7241

Attorneys

Ralph A. Vinje
Chad R. McCabe*
*Also Licensed in MN

Legal Assistants

Jen J. Defoe, CLA
Renee Svilhi

February 10, 2003

To Whom it May Concern:

While North Dakota provides a means for convicted felons to regain their right to bear arms after a period of probation and an additional period established by law, an individual who commits a misdemeanor violation, which is regarded as a domestic violence violation, loses his right to bear arms forever.

In other words, if you shoot your spouse and kill him or her, or shoot your spouse and wound him or her, you have the opportunity to regain your right to bear arms, however, if your spouse slaps you and you return a slap, and your spouse reports you and you plead guilty to a misdemeanor charge of Simple Assault, and it is identified as a domestic violence offense, you lose your right to bear arms forever.

See *United States v. Keeney*, a copy of which is attached hereto.

In the legislation described in House Bill 1337, that problem is corrected. HB 1337 provides a means for a person convicted of a misdemeanor crime of domestic violence to lose his civil rights and to have them restored. It also provides retroactive application to the statute.

When the federal law was changed to include misdemeanor convictions of domestic violence, it was, in effect, retroactive, because anybody who had previously pled guilty to Simple Assault in a domestic arena had no idea that the federal government was going to move to end his or her right to bear arms.

Because this is a retroactive application, many individuals such as members of the National Guard, members of the Reserve, members of various police units, and other people who have the right, and sometimes even the need, to bear arms are allowed to bear arms upon taking the appropriate steps which this statute provides.

I urge approval of House Bill 1337 for the reason that it puts misdemeanor violators on an equal footing with felony violators as far as firearms rights are concerned. Thank you for your attention to this matter.

Sincerely,

Ralph A. Vinje
Attorney at Law

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

10/3/03
Date

West Reporter Image (PDF)

United States Court of Appeals,
Eighth Circuit.
UNITED STATES of America, Appellant,

v.

Bret L. KEENEY, Appellee.
No. 00-2170.

Submitted: Dec. 12, 2000.

Filed: Feb. 26, 2001.

Rehearing and Rehearing En Banc Denied April 18, 2001.

Indictment charging defendant with firearms violations was dismissed by the United States District Court for the District of North Dakota, Patrick A. Conmy, J., and the United States appealed. The Court of Appeals, McMillian, Circuit Judge, held that: (1) a defendant must have lost his or her civil rights pursuant to state statute in order to assert applicability of civil rights restoration exception to prohibition on possession of a firearm following conviction of misdemeanor crime of domestic violence, and (2) loss of the right to possess a firearm, pursuant to a North Dakota statute imposing such loss as a condition of probation, was not the loss of "civil rights" under the exception. Reversed and remanded.

West Headnotes

[1] KeyCite Notes

c=110 Criminal Law

c=110XXIV Review

c=110XXIV(L) Scope of Review in General

c=110k1139 k. Additional Proofs and Trial De Novo. Most Cited Cases

Court of Appeals reviews de novo the district court's decision to grant a motion to dismiss the indictment.

[2] KeyCite Notes

c=406 Weapons

c=406k4 k. Manufacture, Sale, Gift, Loan, Possession, or Use. Most Cited Cases

A defendant must have lost his or her civil rights pursuant to state statute in order to assert applicability of civil rights restoration exception to prohibition on possession of a firearm following conviction of misdemeanor crime of domestic violence. 18 U.S.C.A. §§ 921(a)(33)(B)(ii), 922(g)(9).

[3] KeyCite Notes

c=406 Weapons

c=406k4 k. Manufacture, Sale, Gift, Loan, Possession, or Use. Most Cited Cases

<http://web2.westlaw.com/result/text.wl?RecreateView=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Domenic Halligan
Operator's Signature

10/3/03
Date

Defendant did not lose his any of his civil rights within the core cluster of such rights, and thus did not have his civil rights "restored" within meaning of civil rights restoration exception to prohibition on possession of a firearm following conviction of misdemeanor crime of domestic violence, in light of North Dakota statute specifically stating that civil rights are not lost automatically pursuant to a criminal conviction; loss of the right to possess a firearm, pursuant to a North Dakota statute imposing such loss as a condition of probation, is not the loss of "civil rights" under the civil rights restoration exception. 18 U.S.C.A. §§ § 921(a)(33)(B)(ii), 922(g)(9); NDCC 12.1-32-07, 12.1-33-02.

*1040 Cameron Wayne Hayden, U.S. Atty's Office, Bismarck, ND, for Plaintiff-Appellant.
Michael Ray Hoffman, Bismarck, ND, for Defendant-Appellee.

*1041 Bret L. Keeney, Mandan, ND, pro se.

Before McMILLIAN and JOHN R. GIBSON, Circuit Judges, and LAUGHREY, [FN1] District Judge.

[FN1]. The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri, sitting by designation.

McMILLIAN, Circuit Judge.

The United States of America ("the government") appeals a final decision entered in the United States District Court for the District of North Dakota dismissing the indictment charging Bret L. Keeney with firearms violations, 18 U.S.C. §§ 922(a)(6), 922(g)(9). See United States v. Keeney, No. C1-00-008 (D.N.D. Apr. 5, 2000) (memorandum and order granting motion to dismiss). For reversal, the government argues that the district court misconstrued the so-called civil rights restoration exception of 18 U.S.C. § 921(a)(33)(B)(ii) in reaching its decision to dismiss Keeney's indictment. For the reasons stated below, we reverse the district court's decision to dismiss Keeney's indictment and remand this matter to the district court for further proceedings consistent with this opinion. Jurisdiction in the district court was proper based on 18 U.S.C. § 3231. Jurisdiction in this court is proper based on 18 U.S.C. § 3731. The government's notice of appeal was timely filed pursuant to Fed. R.App. P. 4(b).

Background

In 1998, Keeney was convicted in state court of the misdemeanor crime of domestic violence, which conviction resulted from an assault committed against a former live-in girlfriend. Keeney was sentenced to a term of imprisonment followed by probation. The state court also suspended his firearms privileges pursuant to N.D. Cent.Code § 12.1-32-07 during the period of his incarceration and probation. Keeney was released from probation on March 29, 1999. [FN2]

[FN2]. According to the district court, Keeney was incarcerated from November 13, 1996, to March 3, 1997, and he was on probation from March 29, 1997, to March 29, 1999. See United States v. Keeney, No. C1-00-008, slip op. at 2 & n. 1 (D.N.D. Apr. 5, 2000) (memorandum and order).

The North Dakota Criminal Code, N.D. Cent.Code § 12.1-32-07, requires that "[t]he court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while defendant is on probation." [FN3]

<http://web2.westlaw.com/result/text.wl?RecreatePath=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallsmith
 Operator's Signature

10/3/03

Date

FN3. The North Dakota Criminal Code further states:

1. A person who has been convicted anywhere for a felony involving violence or intimidation, as defined in chapters 12.1-16 through 12.1-25, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of ten years after the date of conviction or release from incarceration or probation, whichever is later.
2. A person who has been convicted of any felony not provided for in subsection 1 or has been convicted of a class A misdemeanor involving violence or intimidation and that crime was committed while using or possessing a firearm or dangerous weapon ... is prohibited from owning a firearm or having one in possession or under control from the date of conviction or continuing for a period of five years after the date of conviction or release from incarceration or probation, whichever is the latter.

N.D. Cent.Code 62.1-02-01.

On September 9, 1999, the Bureau of Alcohol, Tobacco and Firearms ("BATF") executed a search warrant on Keeney's residence and found a nine millimeter handgun. Keeney was charged in a two-count indictment with violations of 18 U.S.C. § 922(a)(6) and § 922(g)(9). [FN4] Section 922(a)(6) prohibits any person from knowingly making false or fictitious statements in connection with the acquisition or attempted acquisition of a firearm. Section 922(g)(9) prohibits persons convicted of a misdemeanor crime of domestic violence *1042 from possessing a firearm. [FN5] Both offenses were predicated on Keeney's prior conviction for a misdemeanor crime of domestic violence under North Dakota law. Keeney moved to dismiss the indictment pursuant to the so-called civil rights restoration exception, which provides:

FN4. The indictment also included a violation of 18 U.S.C. § 924(a)(2), which is the penalty provision of the federal firearms statute. Record on Appeal at 7-8.

FN5. The indictment stated that:

in connection with [Keeney's] attempted acquisition of a firearm ... [he] knowingly made a false and fictitious written statement on a Firearms

Transaction Record Form ... which statement was likely to deceive [the seller] with respect to a fact material to the lawfulness of such attempted acquisition of the firearm by [Keeney] under the provisions of Chapter 44, Title 18, United States Code, in that [Keeney] falsely represented that he had never been convicted in any court of a misdemeanor crime of domestic violence, which in truth and fact, as [Keeney] then well knew, he had been convicted of misdemeanor Assault and Menacing a person similarly

<http://web2.westlaw.com/result/text.wl?RecreateView=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.


Operator's Signature

10/3/03
Date

situated to a spouse.

Designated Record on Appeal at 7.

A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.
18 U.S.C. § 921(a)(33)(B)(ii).

Keeney argued that his prior conviction did not count for purposes of applying the federal firearms statutes because his civil rights had been restored following his state conviction. The district court granted Keeney's motion to dismiss, reasoning that Keeney's right to possess a firearm was taken away while he was on probation and that, when the alleged federal offenses occurred, he was no longer on probation and his civil rights had been restored. The court further reasoned that Keeney's probation was included in the "judgment of his conviction and was part and parcel of his punishment which included" incarceration and that, once Keeney's probation ended, his right to possess firearms was automatically restored. Slip op. at 2. The district court concluded that because Keeney's right to possess firearms had been restored, his predicate conviction could not be considered a "misdemeanor crime of domestic violence." *Id.* at 3.

The district court distinguished *United States v. Smith*, 171 F.3d 617 (8th Cir.1999), in which this court refused to extend the restoration exception to a defendant who was convicted of an underlying misdemeanor offense which did not involve a loss of civil rights. The district court distinguished *Smith* based on its reasoning that the Iowa statute under which the defendant in *Smith* was originally convicted did not strip misdemeanor offenders of any of their civil rights while Keeney's conviction for domestic violence required that his right to possess a firearm be taken away while he was on probation. The district court assumed that the privilege of possessing a firearm is commensurate with the loss of civil rights pursuant to 18 U.S.C. § 921(a)(33)(B)(ii). In reaching its conclusion that it could not ignore "the judgment of the State of North Dakota" that Keeney was trustworthy to possess a firearm, the district court noted the observation in *Smith*, 171 F.3d at 624, that Congress relied on each state's judgment in this regard. See slip op. at 2-3. The district court also referred to *McGrath v. United States*, 60 F.3d 1005, 1008 (2d Cir.1995), where the Second Circuit surveyed judicial interpretations regarding the restoration of civil rights pursuant to the restoration exception. The district court did not articulate whether it sought to follow *McGrath* or to distinguish it. This appeal followed.

Discussion

[1] We review *de novo* the district court's decision to grant Keeney's motion *1043 to dismiss the indictment. See *Smith*, 171 F.3d at 619. For reversal, the government contends that Keeney did not lose his civil rights within the meaning of the restoration exception. The government argues that, because the plain language of § 921(a)(33)(B)(ii) uses the term "civil rights" in the plural, Congress intended that more than a single civil right had to be restored. The government further argues that the "civil rights," which those convicted of a felony typically lose, include the rights to vote, to serve on a jury and to hold public office. The government suggests that, therefore, Congress did not intend that the restoration exception would apply where these rights were not lost. It further suggests that because Keeney did not lose this core cluster of civil rights pursuant to his conviction under North Dakota law, he did not lose his civil rights within the meaning of the restoration exception. The

<http://web2.westlaw.com/result/text.wl?RecreateView=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Hallie Smith
 Operator's Signature

10/3/03

Date

government additionally argues that, because Keeney did not lose his civil rights upon his conviction, they could not be restored upon the completion of probation.

[2] We respectfully disagree with the analysis of the district court. As stated in *Smith*, 171 F.3d at 623, "§ 921(a)(33) only applies to 'civil rights [that have been] restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense).'" We refused, in *Smith*, to accept the defendant's argument that, because he did not forfeit civil rights pursuant to his underlying state conviction, his right to equal protection under the Fifth Amendment would be violated absent application of the restoration exception to him. See *id.* at 624. We reasoned that, because most misdemeanor convictions do not result in the loss of civil rights, to hold otherwise would permit the exception to swallow the rule. See *id.* at 624. In reaching this conclusion, we noted that, because the federal firearms statute is concerned with "preventing a known ... domestic abuser from later using a firearm to inflict the next bout of abuse," and because Congress was cognizant of the fact that domestic abuse offenders who were successful in pleading a felony charge down to a misdemeanor could escape the effect of the felon-in-possession statutes, Congress included, in the firearms statute, a prohibition on possessing a firearm by a domestic abuser convicted of a misdemeanor. *Id.* at 625. Additionally, we emphasized the parenthetical language in the restoration exception which requires that "the law of the applicable jurisdiction [provide] for the loss of civil rights under such an offense." *Id.* at 623. Thus, a defendant must have lost his or her civil rights pursuant to state statute in order to assert that the restoration exception is applicable. Keeney does not refute that his predicate offense of misdemeanor domestic abuse was within the class of offenses included within the prohibition of 18 U.S.C. § 922, but rather he argues that the restoration exception applies to him because his civil rights were taken away pursuant to his conviction and, subsequently, pursuant to North Dakota statute, restored when he was released from probation.

The Second Circuit in *McGrath* held that a felon's retention of civil rights upon his or her conviction was not the functional equivalent of having had civil rights "restored" for purposes of the civil rights exception granted by § 921(a)(20). 60 F.3d at 1007. [FN6] The Second Circuit further held in *McGrath* that "the ordinary meaning of 'restore' could not encompass a person whose rights were never disabled." *McGrath* at 1007, citing *United States v. Ramos*, 961 F.2d 1003, 1008 (1st Cir. 1992). Therefore, the Second Circuit's opinion in *McGrath* and the First Circuit's opinion in *Ramos* are consistent with this circuit's holding in *Smith*. Each of these cases holds that the restoration exception only *1044 applies to a defendant whose civil rights were both lost and restored pursuant to state statutes.

[FN6] In *United States v. Smith*, 171 F.3d 617, 625 (8th Cir. 1999), this court acknowledged that the restoration exception in § 921(a)(33) was modeled after the restoration exception in § 921(a)(20).

[3] We consider whether, under North Dakota law, Keeney first lost and then had his "civil rights" restored within the meaning of § 921(a)(33)(B)(ii). Unless North Dakota law provided for the loss of Keeney's civil rights, the restoration exception is not applicable to him. See *McGrath*, 60 F.3d at 1007. Under North Dakota law, a person convicted of a crime does not necessarily suffer the loss of civil rights. N.D. Cent. Code § 12.1-33-02 states that:
a person convicted of a crime does not suffer ... loss of civil rights ... but retains all of his [or her] rights, political, personal, civil, and otherwise, including the right to hold public office or employment; to vote; to hold, receive, and transfer property; to enter into contracts; to sue and be sued; and to hold offices of private trust in accordance with law.

<http://web2.westlaw.com/result/text.wl?RecreateView=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

10/3/03
Date

Because the general statutory provision, N.D. Cent. Code § 12.1-33-02, specifically states that civil rights, as defined in that statute, are not lost automatically pursuant to a criminal conviction, the specific provisions of the North Dakota statutes under which Keeney was sentenced must be considered to determine if he suffered a loss of civil rights. N.D. Cent. Code § 12.1-32-07 imposes a prohibition on possessing a firearm as a condition of probation. The state court, upon sentencing Keeney for misdemeanor domestic abuse, imposed such a condition. We, therefore, consider whether loss of the right to possess a firearm, pursuant to North Dakota statute, is the loss of civil rights under § 921(a)(33)(B)(ii).

In *McGrath*, the Second Circuit held that the civil rights in question under 18 U.S.C. § 921(a)(20) "are those which most states extend by virtue of citizenship within their borders: (i) the right to vote; (ii) the right to hold elective office; and (iii) the right to sit on a jury." 60 F.3d at 1007. In *United States v. Indelicato*, 97 F.3d 627, 630 (1st Cir. 1996), the First Circuit likewise held that "[a]lthough the Congress did not specify which civil rights it had in mind, [in § 921(a)(33)(B)(ii)] the plurality view among the circuits--explicitly adopted by the [First Circuit in *United States v. Caron*, 77 F.3d 1, 2 (1st Cir. 1996)]--is that Congress had in mind the core cluster of 'citizen' rights ... namely, the right to vote, to serve on a jury and to hold public office". Significantly, § 921(a)(20) and § 921(a)(33)(B)(ii) both refer to civil rights in the plural, thus suggesting that Congress intended to include a cluster of rights, as referenced in *McGrath*, within the meaning of the term "civil rights" as contained in these provisions. See *Smith*, 171 F.3d at 620 (construing a statute, a court looks first to the plain meaning of its words). Although, as noted in *Indelicato*, 97 F.3d at 631 & n.3 (citations omitted), most circuits have held that "all three civil rights must be restored to avoid the federal ban" on possession of firearms, we need not reach that issue because Keeney did not lose any of the rights within the core cluster. We further note that N.D. Cent. Code § 12.1-33-02 designates civil rights which a criminal defendant does not automatically lose, including the right to vote and to hold office, which are among the rights the Second Circuit in *McGrath* found were included in the core cluster of civil rights in question under 18 U.S.C. § 921(a)(20); N.D. Cent. Code § 12.1-33-02 does not mention the possession of firearms.

Consistent with our opinion in *Smith* and the Second Circuit's opinion in *McGrath*, we hold that Keeney did not lose his any of his civil rights within the core cluster and, thus, did not have his civil rights restored pursuant to the restoration exception of § 921(a)(33)(B)(ii). We further hold that because the restoration exception did not apply to Keeney, the district court improperly dismissed Keeney's indictment for violations of 18 U.S.C. §§ 922(a)(6) and 922(g)(9).

*1045 Conclusion

For the reasons stated above, we hold that Keeney did not lose his civil rights, and, therefore, did not have his civil rights restored, within the meaning of the restoration exception, 18 U.S.C. § 921(a)(33)(B)(ii). We, therefore, reverse the decision of the district court granting Keeney's motion to dismiss the indictment against him, and we remand this matter for further proceedings consistent with this opinion.

C.A.8 (N.D.), 2001.

U.S. v. Keeney

241 F.3d 1040

END OF DOCUMENT

[West Reporter Image \(PDF\)](#)

Copr. (C) West 2003 No Claim to Orig. U.S. Govt. Works

<http://web2.westlaw.com/result/text.wl?RecreateView=/Welcome/NorthDakota/default.wl&R...> 2/10/03

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Halligan
Operator's Signature

10/3/03
Date

BISMARCK
Abused Adult Resource Center
222-8370

BOTTINEAU
Family Crisis Center
222-1228

GRANITE LAKE
Alternatives for
Abused Families
1-888-662-7378

DICKINSON
Domestic Violence and
Rape Crisis Center
225-4506

ELLENDALE
Kedish House
349-4729

FARGO
Rape and Abuse Crisis Center
800-344-7273

FORT BERTHOLD RESERVATION
Coalition Against
Domestic Violence
627-4171

GRAFTON
Tri-County Crisis
Intervention Center
352-4242

GRAND FORKS
Community Violence
Intervention Center
746-0405

JAMESTOWN
S.A.F.E. Shelter
746-7233

MONTN COUNTY
Women and Family
Resource Center
800-651-8643

MERCER COUNTY
Women's Action and
Resource Center
873-2274

MINOT
Domestic Violence Crisis
Center
852-2258

RANSOM COUNTY
Abuse Resources Network
683-5061

SPIRIT LAKE
Victim Assistance
766-1816

STANLEY
Domestic Violence Program,
NW, ND
628-3233

VALLEY CITY
Abused Persons Outreach
Center
845-0078

WAHPETON
Three Rivers Crisis Center

JN
Family Crisis Shelter
572-0757

Testimony on HB1337
House Judiciary Committees
Representative Duane DeKrey, Chair
February 10, 2003

Chair DeKrey and Members of the Committee:

My name is Bonnie Palecek and I present this testimony on behalf of the ND Council on Abused Women's Services in opposition to HB1337.

It appears that this bill is in response to a federal law entitled the Violence Against Women Act. VAWA was a part of the federal Violent Crime Control and Law Enforcement Act of 1994. Restrictions on the possession of firearms for those convicted of misdemeanor crimes involving domestic violence and for those under protection order restraints have been in place since that time. (18 U.S.C. 922(g) and 18 U.S.C. 922(g) (9)).

These restrictions have at best been unevenly enforced and at worst totally ignored across the country. Local law enforcement have argued that they should not be expected to enforce federal laws, and ATF officers in a state like North Dakota are few and far between.

On the other hand, many North Dakota judges do routinely follow the federal law and confiscate weapons. Since firearms are the weapon of choice in at least half of domestic violence homicides and used in 20% - 25% of all domestic violence incidents reported to crisis centers in North Dakota, we encourage the enforcement of the federal law in regard to firearms.

The federal law is very strong. The gun ban for those convicted of domestic violence misdemeanors is permanent "unless the conviction has been expunged or set aside or the person has been pardoned or has had his/her civil rights restored." HB1337 seems to be a blanket, preemptive, retroactive



North Dakota Council on Abused Women's Services • Coalition Against Sexual Assault in North Dakota
ndcaws@ndcaws.org • 418 East Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Toll Free 1-888-255-6240 • Fax 255-1904

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

[Signature]
Operator's Signature

10/3/03
Date

attempt to do that. We would question whether legislative action such as this can take away and then restore civil rights. One wouldn't think so.

Also, we question what the "misdemeanor domestic violence offenses" might be. We have felt for some time that a separate crime of domestic violence would be a helpful classification in North Dakota. However, efforts failed to accomplish that as recently as the last legislative session. We do have offenses that under the federal law would constitute "qualifying misdemeanors" which under 18 U.S.C. 922(g)(9) are "state or federal misdemeanors crimes that have as an element the use or attempted use of physical force or the threatened use of a deadly weapon." Perhaps this is what is meant, but at this point as far as we know this definition does not exist in the Century Code.

Finally, giving a convicted criminal guns back "at sentencing" at best sends a mixed message; at worst it dramatically increases risk to victims.

It goes without saying that the right to bear arms is a tightly held right to many. Restraining that right in any way is heartily resisted. We would support the tenets of the federal law, however, which assert that this right may be lost upon conviction of certain criminal behaviors. We urge a "Do Not Pass" on HB1337.

Thank you

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Balliett
Operator's Signature

10/3/03
Date

*from "An Advocate's Guide to Full Faith & Credit
for Victims of Protection"*

Summary of Federal Crimes of Domestic Violence

Advocates need to be familiar with the new federal criminal laws that pertain to domestic violence in order to inform victims of options related to federal criminal prosecution. The contact for assessment of potential federal crimes is the U.S. Attorney's office in your district.

For the following federal crimes, the law defines State to include: a state of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

Interstate Travel to Commit Domestic Violence—18 U.S.C. §2261

It is a Federal crime for a person to travel Interstate, or leave or enter Indian country with the intent to injure, harass or intimidate an intimate partner when in the course of or as a result of the travel the abuser commits a violent crime that causes bodily injury. The abuser must intend to commit the domestic violence at the time of travel. The definition of partner is broad and basically includes a person with whom the abuser has cohabited in an intimate relationship (including a current or former spouse) or a person who has a child in common with the abuser.

It is also a Federal crime to cause an intimate partner to cross state lines, or leave or enter Indian country by force, coercion, duress, or fraud if the abuser intentionally inflicts bodily injury on the partner during or as a result of the conduct.

Interstate Stalking—

18 U.S.C. §2261A

It is a Federal crime to cross a state line with the intent to injure or harass any person if, during the course of or as a result of the travel, the defendant places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. It also is a federal crime to stalk another individual within the special maritime or territorial jurisdiction of the United States (which includes federal reservations). The definition of immediate family is broad and includes a spouse, parent, child, sibling and all other household members who are related to the primary victim by blood or marriage.

Interstate Violation of an Order of Protection—18 U.S.C. §2262

This law basically prohibits Interstate travel or leaving or entering Indian country with intent to violate a valid protection order that prohibits credible threats of violence, repeated harassment, or bodily injury. The abuser must intend to violate the order at the time of travel and a violation of the order must occur.

It is also a federal crime to cause an intimate partner to cross state lines, or to leave or enter Indian country by force, coercion, duress, or fraud if during the course of or as a result of the travel, the defendant places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury.

This project was supported by a Cooperative Agreement (Grant #96-VF-GX-K005) awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice, to the Full Faith and Credit Project of the Pennsylvania Coalition Against Domestic Violence.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dawn Hall-Schiff
Operator's Signature

10/3/03
Date



a result of the conduct, the abuser intentionally inflicts bodily injury on the victim in violation of a valid protection order.

Firearms

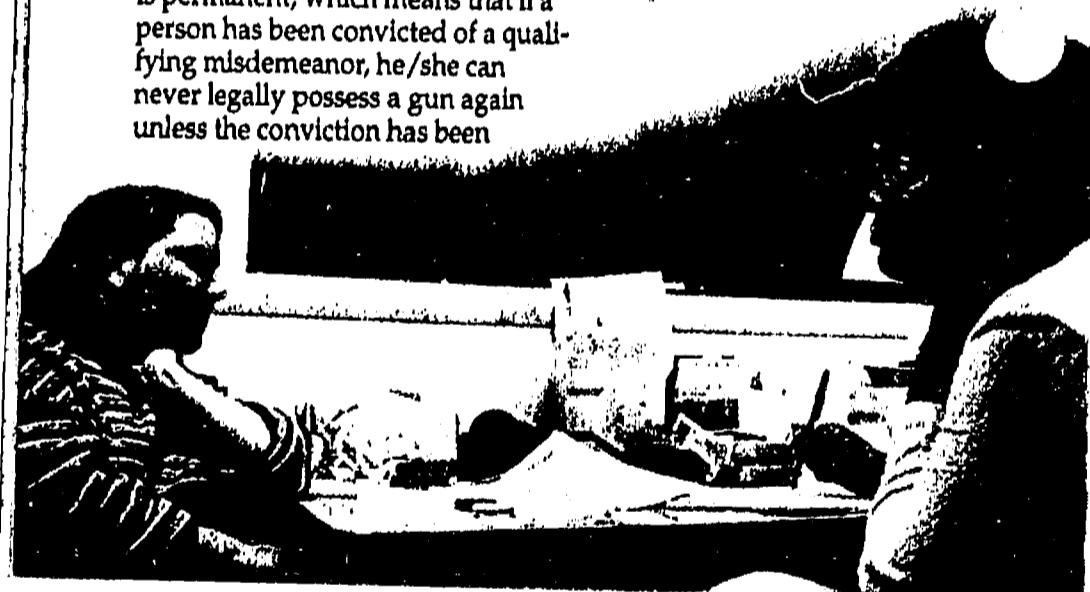
Federal law prohibits an abuser subject to a *qualifying order of protection* from possessing firearms and ammunition. 18 U.S.C. § 922(g)(8). Abusers are not banned from possessing guns and ammunition permanently, only for the time that the order of protection is in existence. Additionally, there are "official use" exemptions, which allow law enforcement and military personnel who are subject to an order of protection to possess their service weapon while on duty.

18 U.S.C. § 922(g)(9) prohibits gun or ammunition possession by anyone who has been convicted of a *qualifying misdemeanor* crime of domestic violence. The law applies to both federal and state misdemeanors that meet certain conditions. The gun ban is permanent, which means that if a person has been convicted of a qualifying misdemeanor, he/she can never legally possess a gun again unless the conviction has been

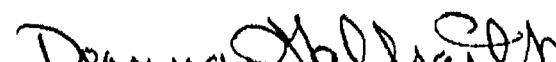
expunged or set aside or the person has been pardoned or has had his/her civil rights restored. There is no "official use" exemption, so law enforcement officers and members of the military are subject to this law, even while on duty. The federal statute is also retroactive, so it applies to convictions that occurred before the law went into effect.

Advocate Tips

- ✓ Advocates should work to have standardized protection order forms adopted which include a warning to the defendant that possession of a firearm or ammunition while subject to a protection order may be a violation of federal law (inclusion of the firearm prohibition in the protection order may facilitate federal prosecution)
- ✓ When appropriate, advocates should encourage victims to tell the court that the defendant is in possession of firearms



The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.


Operator's Signature

10/3/03
Date

WEAPONS AND VICTIM CHARACTERISTICS

- Fifty-one percent of deaths due to homicide during the period 1978-2000 resulted from firearm use. See Table 6 below.
- Table 7 on page 8 provides information on age category of victims and type of weapon involved.
- Firearms were used in 46 percent of the homicides of juveniles. Fifty-two percent of adult deaths due to homicide involved firearms.
- In homicides involving firearms, the weapon was somewhat more likely to be a long gun than a handgun.
- Twenty of the 258 total homicide deaths involved the use of "personal weapons." Personal weapons include the use of hands, fists and feet as weapons.

Table 6
Weapons of Homicide
North Dakota, 1978-2000

Year	Handgun	Other Firearm	Knife	Blunt Instrument	Personal Weapon	Other or Unknown	Total
1978	4	4	1		1		10
1979	3	3	2	1	3	1	13
1980	5	5	2			1	13
1981	3	5	3		1	5	17
1982		3	3				6
1983		9	4	2		3	18
1984	5	2				5	12
1985	3	2	1		2	1	9
1986	3	1	2	2	1	1	10
1987	2	4	5				11
1988	9				2	1	12
1989	2	3	2		1	1	9
1990	3	1	2	1	1		8
1991		4	1	1		5	11
1992	2	6	4	2	1		15
1993	6	4	5	2	2	3	22
1994	1	2				2	5
1995	2	2	1	2		2	9
1996	3	4	4			1	12
1997		1	1	2	4	2	10
1998		3	2			2	7
1999	1	4	3	1		2	11
2000	2	1	2	1	1	1	8
Total 1978-2000	59	73	50	17	20	39	258

Criminal Justice Statistics Special Report
Homicide in North Dakota, 2000

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Donna Halligan
Operator's Signature

10/3/03
Date

- Blunt instruments were more likely to be used by assailants in non-domestic incidents.
- Seventy-two percent of identified female assailants were involved in domestic incidents, compared to 42 percent for males. See Table 22.

Table 21
Domestic/Non-Domestic Incidents
by Type of Weapon and Age Category of Assailant
North Dakota, 1978-2000

Weapon	Domestic		Non-Domestic	
	Juvenile	Adult	Juvenile	Adult
Handgun	1	26	1	22
Other Firearm	5	35	14	16
Knife	3	18	3	31
Blunt Instrument		4	4	15
Personal Weapon	1	8	1	12
Other or Unknown	2	12	2	19
Total 1978-2000	12	103	25	115

Table 22
Domestic/Non-Domestic Incidents
by Type of Weapon and Gender of Assailant
North Dakota, 1978-2000

Weapon	Domestic		Non-Domestic	
	Male	Female	Male	Female
Handgun	23	4	21	2
Other Firearm	36	4	30	
Knife	11	10	31	3
Blunt Instrument	4		18	1
Personal Weapon	8	1	13	
Other or Unknown	12	2	19	2
Total 1978-2000	94	21	132	8

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Douglas Dahlberg
 Operator's Signature

10/3/03
 Date