

Anoka County Attorney Training Update

Bryan R. Lindberg
November 21, 2016

Is an air-powered BB gun a “firearm” for purposes of possession of a firearm by a prohibited person?



ANSWER: Not any longer.

Certain Convicted Felons Ineligible to Possess Firearms or Ammunition. Minn. Stat. § 609.165, subd. 1b provides:

Any person who has been convicted of a crime of violence, as defined in section 624.712, subdivision 5, and who ships, transports, possesses, or receives a **firearm**, commits a felony . . .

Certain Persons Not to Possess Firearms. Minn. Stat. § 624.713, subd. 1(2) provides:

The following persons shall not be entitled to possess ammunition or a pistol or semiautomatic military-style assault weapon or . . . any other **firearm** . . .

Two recent Minnesota cases, *State v. Haywood*,¹ and *State v. Yang*,² have ruled that a BB gun that fires a projectile using compressed air as a propellant is not a firearm for purposes of possession by a prohibited person.

Both courts recognized that they were reversing a prior Minnesota Supreme Court ruling from 1977,³ but since neither statute section included a “firearm” definition, the courts looked at the plain meaning of the word “firearm” and the term “firearm” in other statutes.

In *Haywood*, the defendant had previously been convicted of a crime of violence. He was found in possession of a BB gun pistol that fired projectiles .177 of an inch in diameter using compressed air from a cartridge as a propellant. Haywood was charged with Possession of a Firearm by an Ineligible Person, Minn. Stat. § 609.165, subd. 1b. Haywood argued that the air-powered BB gun he possessed was not a firearm. The Minnesota Supreme Court, while noting that the term “firearm” was defined statutorily elsewhere, there was no definition provided by the statute violated by Haywood. The Court examined the plain and ordinary meaning of “firearm” and looked at the term “firearm” when referenced by other statutes. The court determined a firearm was a “weapon that expels a projectile by the action or force of an explosion or combustion.”⁴ Since an air-powered pistol does not use an explosive force or combustion, the air-powered BB gun was not a “firearm.”⁵

In *Yang*, the defendant had previously been convicted of a crime of violence and was found in possession of compressed-air BB gun pistol. Yang was charged with Certain Persons Not to Possess Firearms, Minn. Stat. § 624.713, subd. 1(2). The Court of Appeals followed the lead of the Supreme Court. Because the term “firearm” was not defined in chapter 624, the Court of Appeals adopted the Supreme Court’s definition of “firearm” in *Haywood* and ruled the air-powered BB gun possessed by Yang was not a “firearm” for purposes of Minn. Stat. § 624.713, subd. 1.⁶

¹ *State v. Haywood*, ___ N.W.2d ___, 2016 WL 6127735 (Minn. Oct. 19, 2016).

² *State v. Yang*, ___ N.W.2d ___, 2016 WL 6670680 (Minn. Ct. App. Nov. 14, 2016).

³ *State v. Seifert*, 256 N.W.2d 87 (Minn. 1977).

⁴ See *Haywood*, 2016 WL 6127735, at *4.

⁵ *Id.*

⁶ See *Yang*, 2016 WL 6670680, at *6.



You'll Shoot Your Eye Out!

BUT, just because an air-powered BB gun is not a firearm for purposes of these two statutes, it is considered to be a *dangerous weapon*.⁷

An air-powered BB gun is a “device designed as a weapon and capable of producing death or great bodily harm” and meets the definition of a “dangerous weapon” in Minn. Stat. § 609.02, subd. 6. An air-powered BB gun can be a “dangerous weapon” for purposes of an Assault in the Second Degree, Minn. Stat. § 609.222, subd. 1; a Burglary in the First Degree, Minn. Stat. § 609.582, subd. 1(b); an Aggravated Robbery in the First Degree, Minn. Stat. § 609.245, subd. 1; or sentence enhancement under Minn. Stat. § 609.11, subd. 4, to name a few.

NOTE

For Department of Natural Resources violations, Minn. Stat. § 97A.015, subd. 19, defines “firearm” as “any gun from which shot or a projectile is discharged by means of an explosive, gas, or *compressed air*.” Also, other statutes specifically include “airguns” when describing prohibited conduct – Minn. Stat. § 609.66, subd. 1(a)(6) (furnishing a firearm or airgun of any kind to a child under 14 years of age); Minn. Stat. § Minn. Stat. 609.66, subd. 1b (furnishing a firearm, airgun, ammunition, or explosive to a minor under 18 years of age).

⁷ *Seifert*, 256 N.W.2d at 88.

ADVISORY

The Supreme Court in the *Haywood* decision purposefully points out that it is the job of the Legislature to include an air-powered BB gun in the definition of “firearm,” if it should choose to do so. At some time in the future, the Legislature may act on the Supreme Court’s subtle suggestion and amend the definition for each of these statutes. But, for now, an air-powered BB gun is not a firearm for purposes of Certain Convicted Felons Ineligible to Possess Firearms or Ammunition and Certain Persons Not to Possess Firearms.



The Anoka County Attorney Training Updates are published as a public service to Minnesota law enforcement agencies. A copy of all previous training updates can be located on our website at: www.anokacounty.us/trainingupdates.

Any questions, comments, or suggestions on training topics should be directed to Bryan Lindberg at 763-323-5643 or e-mail bryan.lindberg@co.anoka.mn.us or to Kim Holbrook, Legal Assistant at 763-323-5662 or e-mail kim.holbrook@co.anoka.mn.us.