

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

GENERAL A. LANEY,

Defendant-Appellee.

FOR PUBLICATION

August 7, 2003

9:05 a.m.

No. 239290

Wayne Circuit Court

LC No. 01-050033

Updated Copy

September 26, 2003

Before: Murray, P.J., and Neff and Talbot, JJ.

MURRAY, P.J.

We granted leave in this case to determine whether it is a question of fact for a jury to decide whether a licensed gun dealer violated state law by verifying that he sold a pistol to a licensee, when the facts plausibly show that the licensee was acting as a so-called "straw man" for a person unauthorized to purchase the pistol from the dealer. Because the unique facts of this case present a jury submissible issue regarding who the pistol was actually "sold to," we reverse the order of the circuit court and remand this case to the district court for further proceedings consistent with this opinion.

I. Material Facts and Proceedings

Defendant was charged with the misdemeanor offense of selling a pistol without complying with state license law, MCL 28.422(5) and MCL 750.223(1). Defendant filed a motion to dismiss the charges on numerous grounds, including an argument that his actions did not constitute a violation of state law. Although the prosecution failed to file a written response to the motion, the district court held an evidentiary hearing on defendant's motion.

After the hearing, the district court issued a thorough and well-written opinion. In that opinion and order, the district court set forth the following findings of fact, which the court indicated were "undisputed":

1. At all times relevant, defendant was a federally licensed gun dealer and owner of Laney's Guns and Supplies in Detroit, Michigan (the "gun shop").

2. On April 6, 1999, undercover Wayne County Sheriff's deputies Walter Epps and Roshunda Coming [sic, Cummings], along with a then 18 year old civilian, Antonio Little, visited the gun shop. The deputies were equipped with hidden surveillance devices to capture visually (to a limited degree) and audibly, the interaction among Epps, Coming, Little and defendant. A copy of that video taped exchange was admitted into evidence as an exhibit at the evidentiary hearing without objection.

3. Little expressed to defendant interest in purchasing a gun from his shop. Defendant asked Little if he had a permit to purchase a gun and Little indicated that he did not. Epps, however, stated that he (Epps) had a permit. Epps presented defendant with a Michigan Department of State Police application and license to purchase a pistol that appeared to be valid but which contained now admittedly fictitious identifying information unbeknownst to defendant.¹ A copy of that application/license was admitted into evidence at the evidentiary hearing without objection.

4. In response to Little's inquiry about how old one must be to obtain a gun permit, Laney explained that "I can't sell you nothing until you're 21." In response to repeated inquiries by Epps about purchasing more than one gun at a time, Laney also explained that such a transaction would be against the law as he was legally allowed to make only one gun sale to a particular person every five days, regardless of how many gun permits that person might have.

5. While at the gun shop, and in his own handwriting, Epps completed a form entitled "Firearms Transaction Record Part I—Over the Counter," issued by the United States Department of Treasury Bureau of Alcohol Tobacco and Firearms. On that form Epps responded that he (under the fictitious identity as the gun license holder) was the actual buyer of the pistol that was being purchased. A copy of the completed transaction record form was admitted into evidence at the evidentiary hearing without objection.

6. Mr. Little either selected or helped select the pistol that was purchased, and actually handled the pistol during the selection process. Mr. Little attempted to give cash directly to defendant in payment for the pistol. When defendant refused to accept and indicated that the money must come from Epps, Little handed the cash to Epps who handed it to defendant.

7. Throughout the course of the transaction, defendant talked about his obligation to follow the law relating to gun sales, including not being able to sell ammunition to Little.

8. The gun license form presented by Epps at the gun shop was completed with the signature and address of the seller, the description of the pistol and the date of sale.

9. The money that Mr. Little handed to Epps for purchase of the pistol was not his own, but was prerecorded government funds. On the same day the pistol was purchased, it was conveyed to the custody of the Wayne County Sheriff's Department and tagged as evidence.

¹ Epps testified at the evidentiary hearing that he presented defendant with a false permit using a fictitious identity (i.e. Dino Otis Labose, birth date August 8, 1971) assigned to Epps by the Wayne County Sheriff's Department. Defendant had no reason to suspect that the gun license, which contained a purported notarized signature, and identification both presented by Epps were fictitious.

After making these findings of fact, the district court concluded that defendant had complied with the statutory obligations imposed by MCL 28.422, finding that he sold the pistol to Epps, a licensee, and therefore, as a matter of law, defendant had not violated MCL 750.223(1). The circuit court affirmed the dismissal of the charges for the reasons articulated by the district court.

II. Analysis

We review de novo the issue presented on appeal because the district court dismissed the charges after applying a statutory provision. *People v Premo*, 213 Mich App 406, 407-408; 540 NW2d 715 (1995), citing *People v Thomas*, 438 Mich 448, 452; 475 NW2d 288 (1991) (review of determination that facts did not fall within proscribed statutory conduct is de novo); *People v Carlson*, 466 Mich 130, 136; 644 NW2d 704 (2002) (examination of the meaning of statutory language presents a question of law that is reviewed de novo). We also must accept the trial court's factual findings unless they are clearly erroneous. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

The critical statutory language is set forth in MCL 28.422(5), which provides that a gun dealer, such as defendant, must verify on a license form "that the pistol was sold to the licensee." Subsection 5 provides that,

[u]pon the sale of the pistol, the seller shall fill out the license forms describing the pistol sold, together with the date of sale, and sign his or her name in ink *indicating that the pistol was sold to the licensee*. The licensee shall also sign his or her name in ink indicating the purchase of the pistol from the seller. The seller may retain a copy of the license as a record of the sale of the pistol. The licensee shall return 2 copies of the license to the licensing authority within 10 days following the purchase of the pistol. [Emphasis added.¹]

¹ We are led to MCL 28.422(5) by MCL 750.223(1), which provides that "[a] person who knowingly sells a pistol without complying with [MCL 28.422] is guilty of a misdemeanor"

Resolution of this case involves a straightforward application of the statute to the facts of this case. The Legislature has set forth a detailed scheme addressing the sale of pistols. One desiring to purchase a pistol must first submit an application to the local commissioner or chief of police, who must issue a license if the statutory criteria are satisfied. MCL 28.422(2)-(4). Once granted, the licensing authority must deliver copies of the license to the licensee, MCL 28.422(4),² and once the licensee purchases a pistol, both the dealer and the licensee must, inter alia, verify on a form that the pistol was sold to and purchased by the licensee. MCL 28.422(5).

In a prosecution under MCL 750.223(1), the people must prove, as one of the elements of the crime, that the defendant did not sell the pistol to a licensee. MCL 28.422(5). Under the unique facts of this case, there is a material question of fact on that issue. The district court's³ factual findings show that defendant knew Little was not a licensee, and therefore, that defendant could not lawfully sell a pistol to Little. Once it was disclosed that Epps had a license, the transaction proceeded. Little asked questions of defendant about different guns, examined different guns, and then attempted to purchase the pistol by handing defendant the money. Defendant, however, refused to take the money from Little, indicating that the money had to come from Epps. In front of defendant, Little gave his money to Epps, who in turn handed it over to defendant. Epps then filled out the paperwork.

These facts reveal a significant question for jury resolution, namely whether the pistol was actually "sold to" Epps when defendant knew that Epps was using Little's money to purchase the pistol handled by Little and that he could not lawfully sell the pistol to Little. As stated by the United States Court of Appeals for the Fifth Circuit in *United States v Brooks*, 611 F2d 614, 619 (CA 5, 1980):

[T]he statute is violated by a sham sale made to a resident when the transaction is really with a nonresident, and it is for the jury to decide, on all the relevant evidence and with proper instructions, whether such a charade occurred or whether there was a bona fide sale to a resident.^[4]

Accord, *United States v Straach*, 987 F2d 232, 239 (CA 5, 1993).

Allowing this case to go to the jury does not require the adoption of the federally recognized "straw man doctrine"⁵ into Michigan jurisprudence.⁶ To the contrary, allowing the

² The statute also requires the licensing authority to retain a copy of the license for six years, and to forward a copy to the director of the Michigan Department of State Police within forty-eight hours of issuance of the license. MCL 28.422(6).

³ Because there was evidence in the record to support the district court's findings of fact, and in particular those in paragraph six, its factual determinations were not clearly erroneous. *Gilmore, supra*.

⁴ The *Brooks* decision was reversed on other grounds in *United States v Henry*, 749 F2d 203, 206 (CA 5, 1984). See *United States v Straach*, 987 F2d 232, 239 n 9 (CA 5, 1993).

⁵ "Straw purchases of firearms occur when an unlawful purchaser . . . uses a lawful 'straw man' (continued...)

jury to decide whether the pistol was actually "sold to" Epps would ensure that the straightforward requirements set forth by the Legislature are enforced. *People v Morey*, 461 Mich 325, 330; 603 NW2d 250 (1999) (recognizing the principle of construction that "[t]he fair and natural import of the terms employed, in view of the subject matter of the law, is what should govern") (citation omitted); *People v Libbett*, 251 Mich App 353, 366; 650 NW2d 407 (2002).⁷ In our view, allowing a jury to determine whether defendant actually sold the gun to Little or Epps ensures that the fair and natural import of the "sold to" provision of MCL 28.422(5) is enforced. *Morey, supra*. Moreover, under the dissent's approach, the successful use of a "straw man" would allow ineligible buyers to easily defeat the legislative scheme and purpose of the statute. *United States v Nelson*, 221 F3d 1206, 1209-1210 (CA 11, 2000), citing *United States v Lawrence*, 680 F2d 1126, 1128 (CA 6, 1982). Indeed, to conclude otherwise would defeat the legislative scheme of licensure, sale verification, and retention of records, because the actual purchaser—Little—would never be made known to the authorities because defendant allowed Epps—the "straw man"—to use Little's money to buy the pistol for Little.⁸ For these reasons, we reverse the circuit court decision and remand this case to the district court for proceedings consistent with this opinion.

Talbot, J., concurred.

/s/ Christopher M. Murray

/s/ Michael J. Talbot

(...continued)

purchaser . . . to obtain a firearm." *United States v Ortiz*, 318 F3d 1030, 1037 (CA 11, 2003).

⁶ See, e.g., *United States v Moore*, 109 F3d 1456, 1460-1461 (CA 9, 1997), which recognizes the straw man doctrine as "nothing more than a long-standing construction of the relevant statutes . . ."

⁷ Accordingly, the fact that there are differences between the federal and state firearm laws has no bearing on the proper disposition of this case.

⁸ Importantly, this is not our view of what should be punishable. Clearly, the judiciary is neither equipped nor authorized to make policy decisions. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 319; 645 NW2d 34 (2002). Rather, it results from allowing the statutory phrase "sold to" to be applied so that the person defendant actually sold the pistol to is identified.