

The Ultimate Backup

A Client News Bulletin

RAINS LUCIA STERN, PC

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New U.S. Supreme Court Decision Could Impact Police Officers Charged With Committing Misdemeanor Offenses Involving Domestic Violence Or Battery On a Spouse, Cohabitant, Or Person He Shared a Child With, Even If Not Charged As Domestic Violence

By Mike Rains

On February 24, 2009, the United States Supreme Court decided a case entitled *U.S. vs. Randy Hayes*. The Supreme Court's decision could have a significant and serious impact on the right of police officers who are charged with misdemeanor crimes of "domestic violence" to possess and carry firearms under the Federal Gun Control Act of 1968 (18 U.S.C. Section 921, et seq.).

Background of the Case

A Federal Grand Jury in West Virginia indicted Randy Hayes for violating the Federal Gun Control Act of 1968 by possessing firearms after having been convicted of a misdemeanor crime of domestic violence. The indictment alleged that Hayes had been previously convicted of a misdemeanor crime of domestic violence in 1994. In fact, Hayes had pled guilty to a simple "battery" misdemeanor charge, which made no reference to the alleged victim being a spouse, cohabitant, or a person with whom he shared a child in common (the female victim was Hayes' wife at the time of the incident).

In moving to dismiss the indictment against him, Hayes argued that he had pled guilty to a "simple" battery conviction, and not a crime

involving misdemeanor "domestic violence." The District Court which heard Hayes's motion for dismissal of the indictment rejected his argument and denied his motion to dismiss.

The United States Court of Appeals for the Fourth Circuit reversed, holding, essentially, that the previous conviction must "have as an element a domestic relationship between the offender and the victim." Because other circuits of the Federal Courts of Appeals had decided the same question differently, the Supreme Court granted a hearing.

Relevant Provisions of the Federal Gun Control Act at Issue in This Case

18 U.S.C. Section 1922(g)(9) makes it "unlawful for any person...who has been convicted in any court of a misdemeanor crime of domestic violence ... [to] possess ... any firearm or ammunition."

Section 1921(a)(33)(A) defines "misdemeanor crime of domestic violence" as follows:

The term 'misdemeanor crime of domestic violence' means an offense that—

(i) is a misdemeanor under Federal, State or Tribal law; and
(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, *committed by a current or former spouse, parent, or guardian of the victim by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.* (Emphasis added.)

Thus, following this holding to its logical conclusion, if a police officer is charged with **any offense** involving domestic violence, in order to avoid the weapon and ammunition prohibition under the Federal Gun Control Act, it will be necessary to have that charge dismissed in its entirety prior to trial, or for the officer to go to trial and obtain an acquittal. Police officers cannot avoid the weapon prohibitions of the Federal Gun Control Act by pleading guilty to offenses which do not have an element of domestic violence or abuse, such as assault, battery, disturbing the peace, etc.

Please feel free to call if you have questions concerning this decision or its potential effect on law enforcement personnel.

The Supreme Court Holding: What It Means to Law Enforcement Officers

The Supreme Court, interpreting the above provisions of the Federal Gun Control Act, reversed the decision of the Fourth Circuit Court of Appeal. It held that the offense Hayes was previously convicted of need not have, as an element, an allegation that the offense was committed against a spouse or other domestic victim. Instead, the Supreme Court held that the underlying offense qualifies as a crime of domestic violence if it was committed by a person falling under the definition of 18 U.S.C. 1921(a)(33)(A)(ii), above.

Under this ruling, an officer who is originally charged with an act involving the use of force or threatened use of force against a spouse, cohabitant, or person with whom he/she shares a child, etc., will suffer a conviction of a “misdemeanor crime of domestic violence” **even if he/she pleads to a more generic or innocuous charge such as simple assault, simple battery, disturbing the peace, etc.**

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