

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
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JAMES HANNAH : NO. 05-86

FINDINGS OF FACT OF GUILT UNDER RULE 23(c)
OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

Bartle, J.

June 28, 2005

Defendant James Hannah was indicted on two counts of making false statements or representations to federal firearms licensees in violation of 18 U.S.C. § 924(a)(1)(A), and one count of engaging in the business of dealing in firearms without a license in violation of 18 U.S.C. §§ 922(a)(1)(A).

Defendant pleaded guilty before the undersigned to Counts I and II, that is, to making false statements or representations to federal firearms licensees. Defendant waived his right to a jury trial as to Count III, and the case proceeded to trial by the court on this Count.

Upon consideration of the evidence presented at trial, the arguments of counsel, and their written submissions, the court now makes the following findings of fact pursuant to Rule 23(c) of the Federal Rules of Criminal Procedure.

On February 13, 2004, the defendant was questioned by agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives regarding three firearms that he purchased that were

recovered by the Philadelphia police from other individuals. The defendant waived his Miranda rights and signed a written statement in which he admitted buying at least nine firearms over the previous eight months and selling eight of them for profit. See Miranda v. Arizona, 384 U.S. 436 (1966).

The defendant admitted the following about each transaction. On June 4, 2003, he purchased a Smith and Wesson .380 caliber semiautomatic pistol for a co-worker of his brother from Suburban Armory for between \$250 and \$300. He sold it to the co-worker for between \$380 and \$400.

On July 17, 2003, the defendant purchased a Lama Model Minimax .45 caliber semiautomatic pistol from the same gun shop for \$300. He then sold it to an individual named "Sean" for \$400.

On August 23, 2003, the defendant bought a Ruger Model P 95 9mm semiautomatic pistol from Gun Crafters for \$370. He later sold it to an individual named "Jamil" for \$450.

During the summer of 2003, an unidentified male asked the defendant to purchase guns for his friends. A few days later, the individual approached the defendant and introduced him to two men named "Leem" and "Dave." On September 19, 2003, "Leem" drove the defendant to Lock's Philadelphia Gun Exchange, and the defendant purchased a Glock Model 27 .40 caliber semiautomatic pistol for approximately \$325. He then sold it to "Leem" for approximately \$400. The next day, "Dave" accompanied the defendant to the Shooter Shop. The defendant purchased a

Taurus PT 145 .45 caliber semiautomatic pistol for \$450 and sold it to "Dave" for \$550.

On November 15, 2003, the defendant purchased a Beretta Model 9000 .40 caliber semiautomatic pistol from Delia's gun store. While he cannot recall the purchase price, he sold this gun to "Jamil" for \$550.

The defendant purchased a CZ Model 100D 9mm semiautomatic pistol from Fishtown Lock and Gun on December 10, 2003 for \$425. He sold the gun to Raheem three weeks later for \$500.

On December 16, 2003, the defendant bought a Mossberg Legacy 12 gauge shotgun, again from Fishtown Lock and Gun, for \$300. He sold the gun to Raheem for \$450.

Finally, the defendant purchased a Glock Model 19 9mm semiautomatic pistol on January 17, 2004 for \$425 at a gun show on Roosevelt Boulevard. He still owned this gun at the time he was interviewed by the agents and turned it over to them.

The question before us is whether the government has proven beyond a reasonable doubt that the defendant violated 18 U.S.C. § 922(a)(1)(A), which provides in relevant part:

It shall be unlawful for any person except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms

The parties have stipulated that the defendant was not licensed by any federal agency to engage in the business of dealing in firearms. They have also stipulated that the defendant's conduct

was willful. We accept these stipulations. Therefore, all that remains to be decided is whether the defendant engaged in the business of dealing in firearms.

A dealer is defined as "any person engaged in the business of selling firearms at wholesale or retail" 18 U.S.C. § 921(a)(11)(A). "'Engaged in the business' means as applied to a dealer in firearms, as defined in section 921(a)(11)(A), a person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms" 18 U.S.C. § 921(a)(21)(C). However, "engaged in the business" excludes "a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or who sells all or part of his personal collection of firearms." Id. "The term 'with the principal objective of livelihood and profit' means that the intent underlying the sale or disposition of firearms is predominantly one of obtaining livelihood and pecuniary gain, as opposed to other intents, such as improving or liquidating a personal firearms collection" 18 U.S.C. § 921(a)(22).

In determining whether one is engaged in the business of dealing in firearms, the finder of fact must examine the intent of the actor and all circumstances surrounding the acts alleged to constitute engaging in business. This inquiry is not limited to the number of weapons sold or the timing of the sales. For example, the location of the sales, the price charged for and

characteristics of the firearms sold, and the intent of the seller are all potentially relevant.

U.S. v. Palmieri, 21 F.3d 1265, 1268 (3d Cir. 1994) (reversed and remanded on other grounds, 513 U.S. 957 (1994)). In determining whether the personal collection or hobby exception applies, "there is no bright line rule. The fact-finder must determine whether the transactions constitute hobby-related sales or engagement in the business of dealing from the nature of the sales and in light of their circumstances." Id. at 1269.

We find beyond a reasonable doubt that for the seven month period between June, 2003 through January, 2004, the defendant engaged in the business of dealing in firearms without a license. Taking all of the relevant factors into consideration, we find that over the time period in question the defendant purchased and sold approximately one gun per month. These purchases or sales were not made for the enhancement of the defendant's personal collection of guns or for a hobby. None of the firearms had any historical value. Rather, at least three of the purchases were made at the request of buyers, and with respect to two of those transactions, the defendant purchased and resold the guns on the same day. In every instance, the defendant sold the guns for profit, and on two occasions, the defendant informed the buyers to obliterate the serial numbers so he would not "get in trouble."

The defendant, without a license, wilfully "engaged in the business" of dealing in firearms by devoting "time,

attention, and labor to dealing in firearms" on a regular basis, "with the principal objective of livelihood and profit through the repetitive purchase and resale of firearms." See 18 U.S.C. § 921(a)(21)(C).

Accordingly, we find the defendant, James Hannah, GUILTY beyond a reasonable doubt of engaging in the business of dealing in firearms without a license, in violation of 18 U.S.C. § 922 (a)(1)(A), as set forth in Count III of the indictment.

BY THE COURT:

/s/ Harvey Bartle III
J.