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Calendar of Events

PSN Anti-Gang Training
July 29 – 31, 2008
Chicago, Illinois

PSN Anti-Gang Training
August 19 - 21, 2008
Spokane, Washington

Noteworthy Caselaw:

Kimbrough v. United States,
128 S.Ct. 558 (Dec. 10,
2007). Sentencing guidelines.

Wright v. Patton, 128 S.Ct.
743 (Jan. 7, 2008). Sixth
amendment right to counsel.

State v. Kalphat, 2008 WL
222366 (Conn., 2008). Evi-
dence seized in violation of
the fourth amendment.

United States v. Turvin, No. 06-
30551, (9th Circuit, February
26, 2008) Extension of traffic
stop for search.

SWIFT & CERTAIN

GUN VIOLENCE PROSECUTION PROGRAM

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Gun Courts

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The use of specialized Gun Courts as a part of the criminal justice system has been spreading throughout the U.S. since the mid-1990s. An offshoot of its successful predecessor, the Drug Court, Gun Courts attempt to move gun-related offenses through the system quickly and efficiently, with many of them handing out harsh punishments even to first time offenders. This results in a two-fold benefit to the participating jurisdiction(s): potential offenders are deterred from committing firearm offenses when they see serious action being taken against current offenders, and current offenders are not out on the streets for months, sometimes even years at a time. Although each jurisdiction has a slightly different approach, the predominant goal of Gun Courts nationwide is the same: to convey the message that violent crimes will not be tolerated.

Providence, Rhode Island

Providence, Rhode Island, was the first jurisdiction to develop a system designed exclusively for

handling firearm offenses. In 1994, after determining that the number of violent crimes involving guns was on the rise, the Superior Court for the counties of Providence and Bristol statutorily created a “gun court calendar.”¹ This was not the creation of a separate court; rather, the following offenses were placed on a separate calendar in the Superior Court to be handled exclusively by assigned personnel:

- purchasing, transporting or possessing a firearm by an individual convicted of a crime or by a fugitive from justice;
- larceny of a firearm;
- carrying a pistol or revolver without a license or permit;
- illegally manufacturing, selling, purchasing or possessing a machine gun; and/or
- altering marks or identifications on firearms.

Additionally, the Gun Court calendar shares jurisdiction with the Superior Court calendar for the following three offenses:

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THE USE OF GUN COURTS AND SIMILAR SYSTEMS IS SPREADING THROUGHOUT THE UNITED STATES. GENERALLY, IN THE JURISDICTIONS THAT UTILIZE THEM, RECIDIVISM RATES ARE DOWN AND CONVICTION RATES ARE UP.

- carrying a dangerous weapon or substance when committing a crime of violence;
- committing a criminal offense while released on personal recognizance or bail for a weapons offense (if convicted of the weapons offense); and
- being a habitual criminal (if the criminal action involves a firearm).

Rhode Island's "gun court calendar" is intended both to move cases through efficiently and to address the "disappearing defendant" problem they had been facing. Prior to the creation of the gun court calendar, there was a fairly extensive period of time between the commission of a crime and trial. This made it easier for defendants to leave the area; for example, in October 1994, of the 231 gun-related cases pending in the courts, 166 defendants were unable to be located for trial.

Rhode Island's gun court calendar has enjoyed a fair degree of success. Prior to its enactment, the average firearms case took 518 days to move through the system, and only 67% had a sentence of some sort imposed on them.² Since the enactment of the program, these statistics have changed remarkably. From 1994-1998, 82% of cases that went through the gun court calendar resulted in a sentence. The average disposition time went down from 518 days to 126 days. This is in part a result of the statutory provision mandating that all trials heard in "gun court" be scheduled on the gun court calendar within 60 days of completion of discovery. Additionally, very good cause is needed to issue a continuance or postponement, and when they are issued, it must be for the shortest period of time practicable.

The initial success of the program has continued and almost 15 years later, the Gun Court program continues to provide effective means of deterrence and prosecution.

Birmingham, Alabama

Alabama takes a slightly different, but equally successful, approach

to gun courts. The Birmingham Gun Court was created in 1995 as a branch of the city's Family Court. It targets first-time, juvenile offenders, and is designed not only to move cases through efficiently, but also to target the problem at its roots and minimize recidivism in juveniles. Multiple state and local agencies were involved in its creation, among them the Alabama Department of Youth

Services ("DYS"), Impact Inc., a local nonprofit designed to assist children and families involved in the criminal justice system, the Department of Probation, as well as both the County Sheriff's Office and the Birmingham Police Department. Even the ATF has gotten involved, utilizing people and other resources from its Project LEAD program to collect data on the firearms received in gun court. This data is used in furtherance of their ongoing gun tracing program.

Procedurally, Birmingham's Gun Court is straight-forward. A juvenile is charged with one of six relevant offenses:

- the gun is found on the juvenile and seized (often discovered during arrest for the commission of another crime, such as shoplifting);
- possessing a gun (most of these are discovered during traffic stops);
- menacing, or otherwise using the gun to harass;
- using the gun in the commission of a crime, such as robbery;
- firing the gun; and
- murder/attempted murder.

If they are a first-time offender, typically, they are retained and a detention hearing is held within 72 hours.³ At the detention hearing, the juvenile can either request a trial (which must be held within 10 days if requested) or they may "plead true." Those who plead true are immediately sent to a High Intensive Training boot camp run by the DYS. The goal of this highly regimented camp is to provide the offending juveniles with self-discipline, self-respect and a respect for authority. They receive daily evaluations, and

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even the smallest of infractions can result in an extended stay at boot camp.

Release from the boot camp comes with a mandatory maximum supervised probation, lasting from 30 days to six months. Terms of this probation can include twice-daily check-ins with the probation officer, unannounced home visits by the probation officer, being placed on house arrest and/or institution of a curfew. All probationers must complete a substance abuse program. Failure to comply with the mandated requirements can result in the juvenile being monitored by either an electronic monitoring device or a voice recognition system.

Alabama also involves the juvenile's parents in their attempt at reform. The parent education program, or PEP, compels parents to attend a seven-week workshop series. The goal of this program is to impress upon the parents that while the gun charge is a serious offense, it is likely the result of an even more serious, underlying problem. Failure of the parent(s) to attend these sessions can result in jail time.⁴

Oddly enough, in its first year, the Birmingham Gun Court saw an increase in the number of gun-related cases that came through its doors. This, however, was believed to be the result of intensified police activity—believing there were now stricter, more legitimate sanctions for juvenile gun offenders, police were more likely to make arrests. However, since then, gun-related crimes have been decreasing; between 1996-97 and 1997-98, juvenile gun offenses were down 38.7%. Recidivism rates were down as well; juveniles that went through Gun Court had a re-offense rate of only 41%, down from 73% of pre-Gun Court offenders. In particular, those who re-offended were less likely to be arrested on gun charges. Prior to Gun Court, 32% of re-offenders were arrested on gun charges; after its creation, only 11% were arrested with new gun charges. As in Rhode Island, the initial success of the program has continued.

New York City, New York

New York City's Brooklyn Gun Court, located in Kings County, has

jurisdiction over five of the more violent crime-ridden precincts in Brooklyn. The Brooklyn Gun Court handles all felony gun possession cases in an area that makes up one-quarter of all of the shootings in the city, and over half the shootings in Brooklyn. Created in 2003, the court has been considered a success, thanks in large part to its willingness to hand down more severe sentences than did previous courts. While New York law has consistently allowed judges to impose mandatory one-year sentences on weapons offenders, it also gave them the flexibility to instead issue less time, or even probation, and many of them did so until the inception of the Gun Court. However, within its first seven months, jail sentences went up, on average, from 90 days to one year; only 4% of defendants were given no jail time. In its first 13 months, 75% of the defendants appearing in gun court were sentenced to at least one year in jail, compared to roughly half of the felony-weapon defendants appearing in the other courts in Brooklyn. Additionally, as with so many other gun courts across the country, the Brooklyn Gun Court requires that all cases move through the system in 120 days or less, down from approximately one year.

Philadelphia, Pennsylvania

Philadelphia's Gun Court was initiated in 2005, and hears all cases whose most serious offense is Violation of Uniform Firearms Act (VUFA). Unlike some of the Gun Courts discussed above, Philadelphia's focus is more on rehabilitating the defendant and educating them on the seriousness of their crimes, rather than punishing them in the traditional sense. The process is as follows. If a defendant pleads (or is found) guilty, they are assigned to an Adult Probation and Parole Department case worker ("APPD"). Each defendant is treated on a case-by-case basis, but there are two main components that are found in each case; intensive supervision/surveillance by the APPD and a social service program. The supervision element includes a gun surrender policy (to be signed by the defendant in Gun Court), increased drug detection, increased face to face contacts, and police and probation officer targeted home visits in designated high crime police districts/divisions during both regular and non-traditional work hours. The social service element includes, at a minimum, between 20-50 hours of community service, conflict resolution,

anger management, and a continuing mandatory gun education program in conjunction with Mothers in Charge (MIC), a violence prevention organization based in Philadelphia.

So far the results have been promising. Since opening its doors, Philadelphia's Gun Court has seen an 8% increase in convictions of gun offenders, from approximately 57% to 65%. Because Philadelphia's Gun Court program is designed primarily to educate and rehabilitate the defendant, time spent in the county jail has increased only slightly, from 43% to 47%. However, their recidivism rate is decreasing: 20% of pre-Gun Court VUFA offenders were re-arrested, compared to only 12% of Gun Court offenders. Additionally, none of the Gun Court probationers were re-arrested on a VUFA charge.

Boston, Massachusetts

Boston's Firearm Prosecution Disposition Sessions ("Gun Court") was created in February 2006, and initially targeted Dorchester, Roxbury, the South End, parts of Mattapan and the downtown areas. All cases in the Lynn District Court involving a firearm-related offense, such as carrying a loaded firearm on a public street, are sent, post-arraignment, to the "firearm session" in Peabody District Court. Once there, a pretrial hearing will take place within 45 days of arraignment and disposition will occur within 120 days. After disposition, cases will be sent back to the Lynn District Court for follow-up proceedings, such as the resolution of companion cases.

Like so many others, Boston's gun court has seen a good deal of success. Within its first 18 months, the court disposed of 243

cases, with a conviction rate of just over 85%. Of those 243 cases, 135 defendants are serving either one year or 18-month minimum mandatory sentences, or more; 35 defendants are serving sentences ranging from probation to committed time under the non-minimum mandatory for firearm and ammunition violations, and 37 defendants are serving sentences ranging from probation to committed time violations of other criminal laws, including narcotics offenses and violent offenses.

Additionally, as hoped, the amount of time it takes gun-related cases to move through the system has decreased. Prior to the creation of the Gun Court, the average firearms-related case took almost a full year to process, about 300 days. Currently, that has been cut in half; the average case is now resolved in less than 180 days, with a goal of reducing that even further to 120 days. Due to its marked success, Boston is planning to expand their Gun Court program to include South and East Boston and Charlestown.

Increasingly, the use of Gun Courts and similar systems is spreading throughout the United States. Generally, in the jurisdictions that utilize them, recidivism rates are down and conviction rates are up. This is hopefully the beginning of a trend that will continue to spread, in an attempt to reduce gun crimes across the country.

¹ R.I. Gen. Laws 8-2-15.1 (2007)

² This reflects sentences in terms of probation as well as time served.

³ If they are not first time offenders they are sent to either adult court or the Department of Youth Services. First-time offenders are simply the only ones *eligible* for Gun Court, but they are not precluded from adult court. Alabama state law allows juveniles as young as 14 to be tried as adults.

⁴ There is a final component to the Alabama system, that of community outreach (presentations to schools explaining the consequences of gun offenses, for example). However, this is fairly underdeveloped due to a lack of resources.

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