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## **Domestic Abuse Law is Dealt a Setback; A Federal Judge Finds Fault with the Use of Gun Laws to Gain Convictions Against Former Domestic Abusers**

**By Gregory D. Kesich, Staff Writer**

A federal judge in Portland has raised doubts about the U.S. attorney's ability to use gun laws to combat domestic violence in Maine.

U.S. District Court Judge D. Brock Hornby dismissed the federal felony indictment last week of a Lewiston man who was facing a prison sentence on the charge of possessing a gun after being convicted of a misdemeanor domestic assault crime.

Hornby ruled that John Frechette did not knowingly waive his right to a jury trial in 1996, when he pleaded "no contest" to the assault charge, because, like most misdemeanor defendants in Maine, Frechette was informed of his rights at a group arraignment.

According to Hornby, that means Frechette's conviction does not meet the standards for the federal gun possession crime. The ruling casts doubt on the ability of federal prosecutors to bring similar charges against others who had pleaded guilty to domestic violence offenses after group arraignments.

The government will hold off on those prosecutions while it appeals Hornby's decision, said First Assistant U.S. Attorney William Browder.

"It is a detour in the road, but we think we will succeed on appeal," Browder said. "We see it as a setback, but we will continue to be very aggressive in these cases."

Over the past four years, 125 people have been prosecuted on federal gun possession charges related to domestic violence cases in Maine. Browder said that makes the District of Maine the leader among all federal court districts in the country, prosecuting more of those cases than more populous districts with higher crime rates.

Using funds from the federal "Project Safe Neighborhoods" program, U.S. Attorney Paula Silsby has hired a dedicated prosecutor for gun cases. The program has won the backing of domestic violence victims groups and gun control advocates.

They expressed dismay over the ruling.

“That is really unfortunate because our U.S. attorney has been an outstanding enforcer of the statute. We are sorry to see her handcuffed on this issue,” said Lois Reckitt, executive director of Family Crisis Services.

“This is a good law that recognized that a majority of Maine homicides are caused by domestic violence and involve guns,” said Cathie Wittenberg, of Maine Citizens Against Handgun Violence. “People need to know that if you make a decision to beat your wife, you are also making a decision not to own guns.”

Under Maine law, convicted felons are the only adults prohibited from having guns. But under federal law, there are eight other categories, including anyone under a protection from abuse order or people who have been convicted of a misdemeanor crime of domestic violence.

That law was passed in 1999, meaning many Maine residents are permanently ineligible to have a firearm even if they don't know about the ban. Some, like Frechette were convicted before there was a law.

In 1996, Frechette was a laid-off factory worker with an eighth-grade education, said his lawyer J.P. DeGrinney.

Frechette called the police to charge his then-girlfriend with assault, but he was arrested instead, DeGrinney said. In court, Frechette was denied a court-appointed lawyer, and pleaded “no contest” to resolve his case. He was sentenced to serve probation.

Eight years later, Frechette was married to a different woman, DeGrinney said. In the intervening years he'd had no domestic violence charges, and only traffic offenses on his record. But when his wife's car was repossessed, a .22 caliber handgun was found under the driver's seat. Frechette admitted to police that he sometimes used it for target shooting, and was charged with a federal felony.

DeGrinney argued that Frechette's original conviction should not count because at the time he waived his right to a jury trial, he was not fully advised of the consequences of his actions.

“People plead guilty for a lot of reasons,” DeGrinney said. “Usually it's because they are guilty, but sometimes it's because they can't afford the cost of a trial, or because they are petrified of the process.”

Frechette thought he was putting an end to his legal troubles by entering a plea, DeGrinney said.

State district court judges often need to find ways to move large numbers of people charged with minor crimes quickly through the system. Defendants are often instructed of their rights as a group, or with a video. In felony cases, group instructions are not considered adequate, but misdemeanors are rarely appealed, so the rules are less defined.

Hornby said he read a transcript of Frechette's arraignment.

"It is plain that Frechette was not individually advised of his right to a jury trial . . ." Hornby wrote. "I concluded that he did not knowingly and intelligently waive his right."

If Hornby's ruling stands, judges might have to question defendants individually at the time they enter pleas.

That is a "big deal," said criminal defense attorney Robert Ruffner.

"It will affect the way uncounseled pleas are done in Maine," Ruffner said. "Prosecutors will have to say, 'if we are not going to be sure that they knew that they were giving up their rights we're not going to be able to bring those cases.'"

Browder said that it was too early to say what the impact would be.

If the government's appeal is unsuccessful, he said, federal and state officials would work together to continue the prosecutions.

"I would venture to guess that if we had to, we could work with the state courts to create a process that would pass muster," he said. "We're all committed to do everything we can to address domestic violence."

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