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Guns, Past Domestic Violence Mean Prison Time; Milwaukee Man State's First to Get Maximum 10 Years Under Federal Law

By Gina Barton, Staff, Milwaukee Journal Sentinel

James W. Garner Jr. said he was on his way home from a meeting with a partner in a new restaurant venture when he was stopped by two detectives from the Milwaukee County Sheriff's Department's gun unit.

They found a pistol and a sawed-off shotgun in the minivan Garner was driving.

Although Garner had only misdemeanors on his record, a federal judge recently sentenced the Milwaukee man to 10 years in prison for the guns.

The reason? Most of those misdemeanor convictions were for domestic violence.

A little-known federal law designed to protect battered women makes it a felony for anyone convicted of even one misdemeanor domestic violence offense to possess a firearm. The U.S. attorney's office in the Eastern District of Wisconsin won its first conviction under the 1996 law in 2002, but Garner, whose history of domestic violence dates back nearly 20 years, was the first in the state to receive the maximum sentence.

"Garner's possession of these firearms represented an escalation in the potential level of violence," said Gail Hoffman, the assistant U.S. attorney who prosecuted him. "This sentence should send a clear message that this statute has teeth."

Throughout his court appearances, Garner, 44, and his attorneys admitted that he has had family and personal problems, but they characterized him as a good father who should be spared a long prison term to care for his 12 children.

According to court records:

In January 2004, sheriff's detectives noticed a slow-moving car pull into a driveway, followed by Garner, in the minivan. The car's driver went into the house. The detectives checked the minivan plate and found it invalid because of unpaid parking tickets. They approached Garner and saw the butt of a pistol through the minivan's window. Garner told them they would find a shotgun in the back.

Garner, who has worked as a chef at Milwaukee restaurants such as Grenadiers, Ristorante Bartolotta and Crowdaddy's, said he bought the handgun because he was planning to open a restaurant and would be carrying a lot of cash, according to deputies. The old, rusty shotgun reportedly belonged to Garner's grandfather.

Garner was on probation for disorderly conduct and resisting an officer after a fight in 2003 with the woman who owns the minivan. In 2000, he was convicted of theft and battery for punching her in the face the year before at a library, in front of five of Garner's children, aged 6 to 9, according to court records.

Garner also has been convicted in domestic violence altercations involving three other women with whom he had children, according to court records. Another has a restraining order against him.

"He's battered or violated a restraining order with virtually every woman he's had significant contact with," Hoffman said at an August 2004 court hearing. "He's moved from battering . . . women to carrying a firearm."

In hearings and at trial, Garner denied the pistol was his. He said he had admitted owning it initially only because deputies coerced him. A jury didn't believe him, returning convictions on three charges: possessing two firearms after a domestic violence conviction, possessing

Garner's criminal history, his refusal to accept responsibility and U.S. District Judge Rudolph T. Randa's finding that Garner tried to tamper with a witness landed him in the top end of the federal sentencing guidelines, 10 years. Randa could have ordered a shorter prison term at Garner's sentencing last month, but he did not.

Garner plans to appeal both his conviction and sentence, according to court records. His most recent attorney, Edward J. Hunt, did not return messages left by telephone and e-mail.

"I'm not a perfect person, but I'm no threat to the community. I'm a chef," Garner said during the August 2004 hearing. "Personal problems, family problems, I've had them. But a lot of people have them. . . . There are people walking around every day functioning that have the same problems I do."

Garner also highlighted some of his children's accomplishments. Garner is the father of 12 children – ages 8 months to 26 years – with nine different women. Until his arrest last year, he had custody of five of them. The five each earned places on the honor roll, and the older ones graduated from high school and are attending college, he said.

"He has children who have unbelievably, unbelievably excelled. He's got to be a great parent – well, at least a good parent," defense attorney Daniel D. Resheteer Jr. said at the hearing. He argued that Garner was a good parent, and that he didn't do anything with the guns.

“It’s a status crime for possessing something that the government says you possessed when you shouldn’t have possessed it,” Resheter said. “It’s not use of violence. It’s not an act of violence. Nothing at all like that.”

Hoffman disagreed, saying, “Even though all of his batteries and all of his convictions – and there are multitudes of them – all relate to the women he was involved with, he is still a violent person.”

A history of domestic violence mixed with firearms can be “lethal,” according to Carmen Pitre, executive director of the Task Force on Family Violence. The sentence shows that Randa considers domestic violence serious, she said. Holding people accountable for their actions is a tool that can help keep victims and their children safe, she said.

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