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Program Puts Gun Violations in Federal Court; The Net is Wider, Penalties Harsher

By Kay Stewart

When Kentucky State Police searched felon William West's van early last year, they found ammunition for a .38-caliber pistol, but they didn't find a gun, so they couldn't charge him with a crime under state law.

But it's a crime under federal law for a felon to possess a gun – or ammunition.

Now the 51-year-old Eddyville man is serving 15 years and eight months in federal prison.

West's case highlights a strategy law enforcement increasingly is using to get offenders off the streets: Focus on gun-related violations, bypass the state court system and "go federal."

With more comprehensive laws, stiffer penalties and less plea bargaining, federal courts increasingly are becoming the favored venue of prosecutors who are choosing the defendants they want to try in the federal system, according to state and federal prosecutors and defense lawyers.

It's all part of the federal Justice Department "Safe Neighborhoods" program known locally as "Project Backfire," which targets gun violators in both the state and federal court systems in Western Kentucky.

In West's case, police were executing a search warrant on his van last February while investigating him in a murder case, but they "couldn't get him on murder," said Assistant U.S. Attorney Tom Dyke, lead prosecutor in Louisville for Project Backfire.

So state police sought the help of federal authorities, who were willing to take the case because of West's criminal history as a felon and the fact that he had violated a federal law by possessing the ammunition.

Although the tactic is "perfectly legal," federal public defender Scott Wendelsdorf said he questioned whether most of the gun-violation cases elevated to federal court are worth the trouble. He argues that federal prosecutions should be limited to crimes

“uniquely federal in nature,” such as interstate trafficking in child pornography or drugs -- crimes local law enforcement isn’t equipped to tackle.

But gun violators are taken to federal court solely to hand out stiff punishments, Wendelsdorf said. “I’m not sure that’s a legitimate reason, but it’s legal and they do it, and God knows, it’s effective.”

Cases Increase

In the past two years since U.S. Attorney Dave Huber announced an effort to increase Project Backfire federal prosecutions, gun-related cases in U.S. District Court in Western Kentucky have increased from 56 in 2004 to 79 cases in 2005. By late last year, there had been 66 cases.

That’s still small compared with gun charges filed in Jefferson County’s state court, where 1,162 cases were handled in 2005 by the county attorney’s office as part of Project Backfire.

Huber said the federal prosecutions are designed to help local prosecutors and law enforcement agencies. They’re “only being federalized,” he said, because of inadequate funding at the state level “for state prosecutors and state prisons.”

“If you don’t want it to be federalized, support your prosecutors and state prisons,” he said, adding that only a small number of cases are elevated to federal court.

He said he couldn’t speculate on the overall impact on gun crimes resulting from the prosecutions but said scores of violators have been sent to federal prison.

“We’re not a panacea,” he said. “We’re just trying to help where we can.”

Dyke said federal prosecutors check gun-related charges in state courts in Jefferson County daily and talk to prosecutors. They also speak to police regularly throughout the western part of the state to encourage officers to let prosecutors know of cases appropriate for federal courts, he said.

Typically, that means cases involving charges of felons possessing a gun and occasionally a small amount of drugs. Most of the cases result in sentences of four to five years in federal court, according to the U.S. attorney’s office.

Jeff Jones, chief deputy of the Daviess County Sheriff’s Department, said the program has given his office “one more resource to prosecute” gun offenders.

In November, Mark A. Jeffries, 56, of Owensboro, was sentenced in U.S. District Court in Owensboro to seven years in prison, followed by four years of supervised release for being a felon in possession of a .45-caliber pistol and drug offenses.

While Jeffries might have received a stiff sentence in state court, there's no parole in federal prison, where offenders typically serve at least 85 percent of their sentence before being eligible for release, Jones said.

Huber acknowledged there are undoubtedly inconsistent punishments for gun violators, depending on whether their cases are heard in federal or state courts. But he said the goal is to help local law enforcement "in taking off the street those folks with guns who tend to be dangerous with guns. We might take a case local police say, 'Get this guy out of my hair.'"

Good Outweighs Bad

Jefferson Circuit Judge McKay Chauvin, who six years ago as a federal prosecutor helped launch Project Backfire for the U.S. attorney's office, agreed there are inconsistencies. But he said the benefits outweigh drawbacks.

The prosecutions, he said, have made defendants aware that carrying a gun can lead to a serious punishment.

Scott Cox, a defense lawyer and former prosecutor, said he questions whether there ever will be consistency, especially when state prosecutors occasionally threaten to take a case to federal court if a plea bargain offer is not accepted.

"I work hard to keep my clients in state court," he said, adding that penalties in federal court are almost always "way, way worse."

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