University of Baltimore Law Forum

Volume 33
Number 1 *Summer/Fall 2002*

Article 2

2002

Federal Firearms Prosecutions: A Primer

Phillip S. Jackson

FEDERAL FIREARMS PROSECUTIONS: A PRIMER

By Phillip S. Jackson

Introduction

For the past several years, the U.S. Attorney's Office, in coordination with the Bureau of Alcohol, Tobacco and Firearms and area police departments, has increasingly pursued in the U.S. District Court the prosecution of persons with previous criminal felony convictions found in possession of firearms. Until recently, in almost all such cases, there was the prospect of greater punishment for those convicted in the federal courts of such a crime than in the state courts of Maryland.[1] The purpose of this article is to acquaint the criminal practitioner with a variety of salient issues he or she will confront when involved in a case where a client faces federal firearm charges.

The Crime

In the majority of cases pursued under this federal firearms initiative, the primary charge is an alleged violation of 18 U.S.C. § 922(g)(1)(2002), colloquially known as a "felon in possession" charge.[2] That statute reads, "It shall be unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year, to . . . possess in or affecting commerce, any firearm or ammunition."[3] Although prosecutions initiated under this statute usually involve the alleged illegal possession of a handgun, note that it is also unlawful for a convicted felon to possess firearm ammunition.[4] Indeed, a significant minority of federal firearm prosecutions involved defendants in possession of ammunition without a handgun.[5] The bail and sentencing provisions outlined below apply with equal weight to those charged with either unlawful possession of a firearm or illegal possession of ammunition.[6]

To convict a defendant for unlawful possession of a firearm by a felon, the government must prove three basic elements: (1) that the defendant possessed a firearm or ammunition; (2) that prior to his or her possession of that weapon or ammunition, the defendant had suffered a disqualifying criminal conviction; and (3) that the firearm or ammunition affected interstate commerce.[7] A defendant convicted of a Section 922(g) violation faces a ten-year maximum term of imprisonment, except in those cases where because of his or her prior criminal record a defendant is considered an "armed career criminal" as defined by 18 U.S.C. § 924(e).[8,9] The "armed career criminal" provisions of Section 924(e) are explored in more detail below.[10]

Although the *mens rea* aspect of this crime requires the government to prove defendant knowingly possessed a firearm, it is not necessary that the government prove defendant knew that his or her possession was unlawful, that he or she knew of his or her prior felony conviction, or that he or she knew the firearm was somehow involved in interstate commerce.[11,12]

The lion's share of litigation in these cases center on search and seizure issues and the possession element of the crime. Whether a particular weapon is a firearm, whether a defendant has been previously convicted of a disqualifying crime, and whether the firearm or ammunition affects interstate commerce are not typically points of contention at trial.[13]

The definition of "firearm" is found at 18 U.S.C. § 921(a)(3), and includes:

> (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive;
> (B) the frame or receiver of any such weapon;
> (C) any firearm muffler or firearm silencer; and
> (D) any destructive device.[14]

By that definition, the government need not allege or prove that the firearm is operable.[15] Antique firearms are excluded from the definition of "firearm" and, therefore, from application of the criminal statute.[16] "Ammunition" as defined by 18 U.S.C. §922(a)(17)(2002), includes

"cartridge cases, primers, bullets [and] propellant powder designed for use in any firearm."[17]

For the element concerning a defendant's prior criminal conviction to apply, it is only necessary that the defendant's prior criminal conviction subjected him or her to a potential penalty of incarceration of more than one year. It is immaterial that the actual sentence meted out involved no term of imprisonment or a term of imprisonment of less than a year; however, a misdemeanor conviction under state law and punishable by less than two years incarceration would not disqualify a defendant from lawful firearm possession under 18 U.S.C. § 922(g)(1).[18, 19] So, for example, a defendant whose only prior conviction was for a misdemeanor theft in Maryland (a crime whose maximum sentence is eighteen months) could not be federally prosecuted under Section 922(g)(1) for unlawful possession of a firearm.[20]

As it is seldom tactically advantageous to have the prior criminal conduct of one's client accentuated at trial, this is an element that is typically readily stipulated to by defense counsel. When addressed as a stipulation, the district court judge should only allow evidence of the fact of the disqualifying conviction.[21] No information about the nature or circumstances of that conviction should be imparted to the jury.[22] When linked with an appropriate limiting instruction to the jury, the potential prejudicial effect of the client's prior criminal record can thereby be kept to a minimum.[23]

With an eye to that legislation, the best course of action for a practitioner representing a client charged with a Section 922(g) violation may be to request a pre-sentence report very soon after entering the case. The district court can, at its discretion, order a pre-sentence report even where a defendant has not yet been convicted of the crime with which he or she has been charged. In the normal course of investigation, the U.S. Probation Officers do a very thorough and accurate examination of defendant's prior criminal conduct. A pre-sentence investigation may very well determine that in light of the above described legislation, your client may not be disqualified from possessing a firearm at all. At worst, the preliminary pre-sentence report will more fully inform you and your client of the potential exposure he or she faces. As outlined below, your client's potential length of incarceration is very much a factor of his or her prior criminal record.

As to the interstate commerce element, it is sufficient that the government shows that the firearm was manufactured outside the state where the defendant possessed it.[24] This too is an element typically handled for expediency's sake by stipulation. Since the Supreme Court's decision in *United States v. Lopez,*[25] there have been some rumblings that more may be required in the way of a showing of a measurable or substantial effect on interstate commerce.[26] However, in recent decisions the Fourth Circuit has declined to read into *Lopez,* and its progeny, any greater burden than that outlined above.[27]

The same precepts that govern other crimes having a possessory element govern the possession element of a Section 922(g)(1) violation.[28] The government need not prove the defendant had actual or exclusive possession of a firearm; constructive or joint possession is sufficient.[29] The government may prove constructive possession by demonstrating that the defendant exercised, or had the power to exercise, dominion and control over the firearm.[30] On that basis, the Fourth Circuit upheld the conviction of a defendant where the firearm was seized from a residence in which the defendant had been observed for two days prior to the execution of that warrant although he was not present at the time of the warrant's execution and in which the defendants personal papers were found proximate to the seized firearm.[31] Similarly, the court upheld the conviction where the gun was recovered from the defendant's bedroom, and at the time of his arrest, ammunition of a matching caliber was found in the defendant's pocket.[32] On the other hand, the court found evidence insufficient to sustain a conviction where the firearm had been recovered from under the seat of the defendant who was merely a passenger in an automobile.[33]

With respect to joint possession, the Fourth Circuit affirmed in an unpublished case the firearm conviction of the driver of a vehicle who never had actual or exclusive possession of a firearm.[34] In that matter, a front seat passenger was observed by the police pointing a handgun out the car window, but the court was able to infer, based on the police chase that followed, that the driver had knowledge of the firearm's presence in the car, and had apparently shared in the purpose of the passenger's brandishing that weapon.[35]

In my legal experience, the "possession" aspect of

the crime is the most contested element of a Section 922(g) prosecution.[36] As a practical matter, it is more a matter of advocacy and persuasion as applied to the specific facts of the case, than knowledge of the legal parameters of "possession" that are key to the disposition of these cases. Quite often, the firearm in issue is not found in the exclusive possession of the defendant, as when a gun is found lying in a vehicle full of passengers. Equally often, the defendant is not found proximate to the firearm when it is seized, as when a gun is found in an empty residence. Normally, it will not be the issue of sufficiency of the evidence that determines your client's fate, but rather your skill in distancing the client from the seized weapon.

Affirmative Defenses

In *United States v. Perrin*,[37] the Fourth Circuit joined several other circuits[38] in ruling that a defendant charged with a Section 922(g) violation has available to him or her the claim of self-defense. The court indicated, however, it was prepared to recognize that defense in only a very narrow range of cases.[39] To raise the defense of justification or self-defense, a defendant must produce evidence that would allow the fact-finder to conclude: (1) the defendant was under an unlawful and present threat of death or serious bodily injury; (2) the defendant did not recklessly place himself or herself in a situation where he would be forced to engage in criminal conduct; (3) the defendant had no reasonable legal alternative to both the criminal act and the avoidance of the threatened harm; and (4) there was a direct causal relationship between the possession of the firearm and the avoidance of the threatened harm.[40]

In its reported decisions on this issue, the Fourth Circuit emphasized the threat causing the defendant to arm himself must be imminent. In that regard, the court has held that even where a defendant's fear of attack may have been both rational and his true motivation for carrying a firearm, a self-defense jury instruction was not warranted in a case where the defendant, in the course of his legitimate profession, was shot eight months previous to his arrest and had, therefore, purchased a firearm in response to that earlier attack.[41] Moreover, a self-defense jury instruction was not warranted in a case where two days prior to the arrest, a shotgun-toting enemy stalked the defendant.[42]

On the other hand, the court endorsed a self-defense jury instruction in those cases where the threat was both deadly and immediate. For example, where a defendant without provocation was threatened by a gunman, and then wrestled the gun away from his assailant, the jury should be properly instructed on self-defense.[43]

Bail/Detention

Once arrested, the issue of pre-trial detention is naturally the prime concern of most defendants. In that regard, it is important to be familiar with 18 U.S.C § 3142 (2000). I will here endeavor to briefly highlight Section 3142's significant provisions as they affect alleged firearm violations. Under Section 3142's statutory scheme, the government's ability to seek detention of an arrestee is not plenary. Rather, the government can seek detention only if the charged conduct is (1) "a crime of violence;" (2) "an offense for which the maximum sentence is life imprisonment or death;" (3) a controlled substance violation that carries a term of ten years or more imprisonment; or (4) a felony[44] and the defendant has been previously convicted of any combination of two or more violent crimes or narcotics felonies.[45] In addition, the government can also seek detention if the defendant is a serious flight risk or presents a serious risk that he or she will obstruct or attempt to obstruct justice.[46]

Because a defendant who finds himself or herself charged with a federal handgun violation will typically have an extensive criminal record, it is usually on the ground that a defendant has two or more prior violent crime and/or narcotics felony convictions that the government moves for detention. As outlined above, in such cases, Section 3142 explicitly authorizes the government to move for pretrial detention. However, in cases where a defendant has only one prior conviction for a violent crime or narcotics felony the law is unsettled as to the government's authority to move for detention. In such cases, usually the only basis for the government's detention motion would be that the Section 922(g) violation constitutes a crime of violence. Although it is long settled that for sentencing guideline purposes a Section 922(g)(1) violation is *not* a "crime of violence,"[47] it is unclear whether, for Section 3142(f) purposes, a felon in possession charge is a "crime

of violence" that would allow the government to move for detention.

A "crime of violence" includes those felonies that, by their nature involve a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. In concrete terms, the issue is whether the government can ask for the detention of a defendant who, while on parole for a violent felony, is caught with a loaded firearm on the street in an open-air drug market, and then charged with a Section 922(g) violation. To date, the Fourth Circuit has not addressed this issue. Those circuits that have wrestled with this issue have come to divergent conclusions.[48] Indeed, within this district there has been a split. In *United States v. Aiken*,[49] the court held, as a matter of law, a felon in possession charge constitutes a "crime of violence" for purposes of Section 3142(f), while Judge Chasanow has more recently held to the contrary.[50]

In those cases where the government is statutorily authorized to move for the pre-trial detention of a defendant, it must convince the presiding magistrate by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of the community.[51] In making that decision, the magistrate must consider the following factors:

1. the nature and circumstances of the offense charged;
2. the weight of the evidence against the defendant;
3. the history and characteristics of the defendant, including such things as his or her prior criminal record, employment record, ties to the community, physical and mental condition, and whether at the time of the charged violation the defendant was under some form of court supervision; and
4. the seriousness of the danger to the community that would be posed by the defendant's release.[52]

The hearing in which the detention issue is fleshed out usually occurs at a time removed from a defendant's initial appearance before the magistrate. This delay is typically occasioned by a request for continuance made by either party that must be granted. If the government makes the continuance request the detention hearing can be delayed for up to three days. If the defendant makes the continuance request the detention hearing can be delayed for up to five days.[53] In the interim, an agent of United States Pretrial Services will interview the defendant, conduct a background investigation, and prepare a report addressing the factors that must be weighed by the court in making its decision.

Finally, should either party choose, 18 U.S.C. § 3145 (2000) provides for review by the district court of a magistrate's detention/release determination. Such reviews are conducted *de novo*.[54]

Search and Seizures Issues

Search and seizures issues confronted by the practitioner in such cases will vary widely. A comprehensive treatment of those issues in this article is impracticable. However, as a general matter, firearm seizures result from an on-the-street encounter or a car stop, or a search warrant.

In regard to those firearms seized as the result of the execution of a search warrant, the practitioner will want to be familiar with *Arkansas v. Wilson*[55] (cases where a no-knock entry was made); *United States v. Lalor*[56] (issue as to the nexus between the firearm seized and the residence for which the warrant was sought); *Illinois v. Gates*[57] (analysis of what comprises "probable cause"); *United States v. Leon*[58] (for the metes and bounds of the "good faith exception"); and *Franks v. Delaware*[59] (in those cases where it is suspected the affiant misrepresented facts to the issuing magistrate).

With regard to those firearms seized as the result of an on-the-street encounter between the police and your client, the practitioner will want to be familiar with *California v. Hodari D.*[60] (where the defendant discarded the drugs during a police chase); *United States v. Mendenhall*[61] (an analysis of the point at which an on-the-street encounter becomes a detention for Fourth Amendment purposes); *Terry v. Ohio*[62] (an analysis of what amount of evidence is necessary to briefly detain and frisk a suspect); and *J.L. v. Florida* (in those cases where the stop was prompted by an anonymous tip).

In regard to those cases arising from a gun found in a car, the practitioner will want to be acquainted with *Delaware v. Prouse*[63] (for a discussion of the quantum of evidence needed to justify a warrantless traffic stop); *Michi-*

gan v. Long[64] (for a discussion of the lawful scope of a warrantless search of an automobile made incident to a *Terry*-type stop); *Maryland v. Wilson*[65] (for the proposition that, as part of a lawful traffic stop the police can order the occupants of a vehicle to get out of the stopped car); *New York v. Belton*[66] (for a discussion of the lawful scope of a warrantless search of a car made incident to the arrest of a car's occupant); *Carroll v. United States*[67] and *United States v. Ross*[68] (for discussions of the quantum of evidence needed for and the lawful scope of a warrantless search of an automobile).

Sentencing

As outlined above, a defendant who does not qualify for enhanced sentencing under 18 U.S.C. § 924(e) faces a ten-year maximum term of incarceration. In meting out a sentence in such a case, the judge's sentencing options are circumscribed by the United States Sentencing Guidelines that, unlike Maryland's sentencing guidelines, are not merely precatory.

A pair of numeric scores drives the federal sentencing guideline scheme. One score involves a defendant's prior criminal conduct, and is referred to as the Criminal History Category. The crime for which a defendant is being sentenced is also accorded a numeric value, and is referred to as the Offense Level. Where those two scores intersect on the guideline matrix,[69] a range of months is found. Within that range of months the federal judge must sentence a convicted defendant to prison.

In ascertaining the appropriate offense level for convictions of 18 U.S. C. § 922(g)(1) violations, United States Sentencing Guidelines Manual § 2K2.1 is the pertinent reference point. Generally speaking, if a defendant has previously been convicted of any combination of two "controlled substance offenses"[70] or "crimes of violence,"[71] his or her offense level is twenty-four. [72] If a defendant has previously been convicted of only one narcotics or violent felony, his or her offense level is twenty.[73] There are certain offense specific adjustments that could enhance or reduce the offense level depending on the circumstances of the crime of conviction. As an example, if the firearm at issue was stolen or had an obliterated serial number, that offense level would be increased two levels.[74] Those adjustments are outlined in U.S.S.G. § 2K2.1(b).

For determining a defendant's criminal history category, Section 4A.1 of the United States Sentencing Guideline Commission manual is the relevant guideline. By that section, the number of a defendant's previous convictions, the length of imprisonment imposed for those convictions, and the defendant's status vis-á-vis the criminal justice system at the time of the crime are all factored in determining the defendant's criminal history category.

As an example, a defendant who, within the past two years was convicted of narcotics distribution, received a suspended sentence, and who was still on probation at the time of the instant Section 922(g) violation, would by § 4A1.1's computations have a criminal history category of II. Having suffered only one previous conviction for a narcotics or violent felony, this hypothetical defendant's offense level would be twenty per Section 2K1.1(a)(4). Assuming this defendant's conviction came as the result of a jury trial, his sentencing guideline range would be 37-46 months of incarceration. Under such circumstances, (indeed under almost all circumstances where a defendant has only one prior narcotics or violent felony conviction) a federal sentence would be less than the five-year minimum mandatory sentence that would attach to a conviction obtained under Maryland's analogous firearms statute.[75]

That would certainly not be the case where a defendant convicted of a Section 922(g)(1) violation suffered three previous convictions of any combination of "violent felonies" or "serious drug offenses" committed on occasions different from one another. Under such circumstances, notwithstanding the sentencing provisions outlined above, per 18 U.S.C. § 924(e)(1) (more popularly termed the Armed Career Criminal Act or "ACCA"), a defendant faces a minimum mandatory fifteen-year term of imprisonment and a maximum life term of incarceration.[76]

The term "serious drug offense" is defined at 18 U.S.C. § 924(e)(2)(A) as any federal narcotics offense for which the maximum term of imprisonment is ten years or more; or any state narcotics violation involving the manufacture, distribution or possession with intent to distribute narcotics for which the maximum term of imprisonment is ten years or more. By that definition, a conviction for simple possession of narcotics would not be a "serious drug offense," and would, therefore, not count as a predicate conviction for ACCA purposes. Under Maryland

law, the maximum sentence for distribution of marijuana is only five years[77]; therefore, a conviction for the distribution, manufacture, or possession with intent to distribute marijuana similarly would not be a "serious drug offense."

In pertinent part, 18 U.S.C. § 924(e)(2)(B) defines "violent felony" as "any crime punishable by imprisonment for a term exceeding one year . . . that -- (i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or (ii) is burglary, arson or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." In other words, a crime will be classified, as a "violent felony" if it is specifically so designated, *e.g.* a burglary has an element involving the use of force, *e.g.* a murder or robbery,[78] or its commission, involves a serious risk of injury to others.

In *Taylor v. United States*[79], the Court wrestled with the issue of how a sentencing court should approach a defendant's prior criminal record in determining what qualifies as a "violent felony" conviction, where the prior conviction is not explicitly so stamped by Section 924(e)(2)(B). Choosing from among alternative approaches, the Court adopted a "categorical approach," in which weighing a defendant's prior record, the sentencing court is required generally "to look only to the fact of conviction and statutory definition of the prior offense." [80]

Note that although *Taylor* usually restricts the district court's inquiry to ascertaining the statutory definition of the prior offense, the Court also recognized that "[t]his categorical approach ... may permit the sentencing court to go beyond the mere fact of conviction in a narrow range of cases . . . ."[81] On that language, in *United States v. Cook*[82], the court held where a crime may be committed by both violent and nonviolent means, "the sentencing court must examine the charging papers and the jury instructions" to determine whether the crime for which the defendant was convicted was done by violent means.

On paper this process sounds simple and straightforward. In practice these determinations have spawned manifold and wide-ranging appellate decisions. Because the various states have disparate definitions for similarly titled crimes, even those crimes explicitly designated in the ACCA as "violent felonies" are often the subject of heated appeals. As just one example, before Maryland re-codified its breaking and entering statutes in 1994, "burglary" was defined as "the breaking and entering of the dwelling house of another in the nighttime with the intent to commit a felony."[83] In Missouri, however, a burglary conviction could result from the unlawful entering of a building for the purpose of committing a crime therein[84] irrespective of whether the building entered was a dwelling, the entry occurred at night, or the crime intended was a felony or misdemeanor. In having to choose from a host of possible definitions, federal courts were, therefore, faced with the difficult task of determining what constitutes a burglary for Section 924(e)(2)(B).

In addressing this dilemma, the *Taylor*[85] Court concluded Congress did not have intend the crime of "burglary" to have a variety of meanings varying the impact of prior convictions for like crimes depending on the state where a defendant's prior convictions occurred. Instead, the Court reasoned "Congress meant by 'burglary' the generic sense in which the term is now used in the criminal codes of most States . . ., [a crime which] contains at least the following elements: an unlawful or unprivileged entry into, or remaining in, a building or other structure, with intent to commit a crime."[86] Thus, what under Maryland law had historically been deemed a "storehouse breaking" would for Section 924(e) purposes be considered a "burglary."[87]

Even more problematic is discerning the effect of prior convictions for crimes not explicitly categorized as "violent felonies," defined as those crimes involving a serious risk of injury to others. Although not having an element the intentional application of force, such crimes as escape[88] and involuntary manslaughter[89] have been construed as "violent felonies" because their commission in all cases involves a serious potential risk of physical injury. There are other crimes where the commission involves a significant risk of injury to others (*e.g.,* resisting arrest[90] and possession of a firearm in relation to a drug trafficking crime),[91] which perhaps could perhaps serve as predicate crimes under the ACCA and which undoubtedly the appellate courts will be asked to construe in the future.

Where the prior conviction was for a crime that can be committed by either violent or non-violent means, the sentencing court may consider the charging document underlying that prior conviction, the instructions made to the jury at the trial of that crime[92] and the pre-sentence reports prepared as an aid for sentencing that prior convic-

tion.[93] In *United States v. Coleman*, the issue was whether a previous common-law assault conviction should count as a "violent felony" conviction. A common law assault may encompass some conduct that does not involve the use, attempted use, or threatened use of physical force.[94] In determining whether that prior assault conviction was a "violent felony" for Section 924(e) purposes, the district court properly referred to the probable cause statement that accompanied the statement of charges. The probable cause statement indicated, that in the course of the alleged assault Coleman pointed a gun at a police officer. On this basis, the circuit court concluded that Coleman's prior assault conviction was properly categorized as a "violent felony."

Often the pre-sentence report will note several previous convictions that share a common sentencing date. For instance, if the police arrest a burglar who is subsequently charged with multiple burglaries that occurred over the course of a month, the burglar may end up pleading, and being sentenced to a number of burglaries at one time. Under such circumstances, the issue becomes whether those prior offenses were "committed on occasions different from one another." If treated as having been committed on separate occasions, each burglary charge would be separately counted as a qualifying conviction for Section 924(e) purposes. If not, the convictions would count collectively as only one prior conviction, and a significantly different sentence would be meted out. Convictions occur "on occasions different from one another" if each of the prior convictions arose out of a separate and distinct criminal episode.[95] Courts have applied a variety of factors to determine whether multiple convictions constitute separate and distinct criminal episodes, including whether the offenses arose in different geographic locations, whether the natures of the offenses were substantially different and whether the offenses involved different victims and different criminal objectives.[96] In the above scenario, the burglar who in a single court proceeding had been convicted and sentenced for multiple burglaries would likely be treated as an armed career criminal and would face a minimum mandatory fifteen-year term of imprisonment.

The ability of counsel to attack the viability of those prior convictions is sharply circumscribed. In a case where the defendant sought to have the sentencing court review his previous convictions on the grounds that he was ineffectively represented by counsel, the Supreme Court held with the sole exception of those prior convictions where the court failed to appoint counsel for the defendant, the defendant in a federal sentencing proceeding has no right to collaterally attack his previous convictions at his sentencing for a federal firearm violation.[97]

Finally, once it is determined that a defendant is subject to the provisions of the ACCA, the pertinent sentencing guideline is found in Section 4B1.4 of the United States Sentencing Guideline Manual. Under Section 4B1.4, a defendant's criminal history category will never be lower that Category IV,[98] and a defendant's offense level will never be lower than thirty-three.[99] Therefore, the lowest sentencing guideline range for an ACCA-qualified defendant convicted at trial of a Section 922(g)(1) violation is from 188 to 235 months.

ABOUT THE AUTHOR

Philip S. Jackson is a 1984 graduate of the University of Baltimore School of Law. For the past ten years, the author has been an Assistant United States Attorney with the U.S. Attorney's Office for Maryland assigned to the Violent Crime/ Narcotics section of that Office.

1. During 2001, Article 27, Section 449(e) of the Annotated Code of Maryland was enacted, which imposed a mandatory five-year term of incarceration for violators who, having been previously convicted of certain violent crimes and narcotics felonies, were found in possession of a firearm.
2. 18 U.S.C. § 922(g)(1) (2002).
3. *See id.*
4. *Id.*
5. *Id.*
6. Accordingly, the terms "firearm" and "ammunition" will be used interchangeably throughout this article.
7. 18 U.S.C. § 922.
8. 18 U.S.C. § 924(a)(2) (2002).
9. *See id.*
10. *See id.*
11. *See* United States v. Frazier-El, 204 F.3d 553, 561 (4th Cir. 2000).
12. *See* United States v. Langley, 62 F.3d 602 (4th Cir. 1995).
13. *See* 18 U.S.C.§ 921(a)(3) (2002).
14. "Destructive device" is defined at 18 U.S.C. § 921(a)(4) and includes such things as hand grenades, mines and bombs.
15. United States v. Willis, 992 F.2d 489, 491 n.2 (4th Cir. 1993)
16. *See* 18 U.S.C. § 921(a)(16).
17. *See* 18 U.S.C. §922(a)(17).

18. *See* United States v. Coleman, 158 F.3d 199, 203-204 (4th Cir. 1998).
19. 18 U.S.C. § 921(a)(20).
20. A violation of Article 27, § 342(f)(2) of the Annotated Code of Maryland.
21. *See* United States v. Poore, 594 F.2d 39 (4th Cir. 1979).
22. *See id.* at 39, 42.
23. *See id.*
24. *See* United States v. Gallimore, 247 F.3d 134, 138 (4th Cir. 2001).
25. *See* United States v. Lopez, 514 U.S. 549 (1995).
26. *E.g.,* United States v. Coward, 151 F.Supp.2d 544 (E.D. Pa. 2001).
27. United States v. Nathan, 202 F.3d 230 (4th Cir. 2000); United States v. Gallimore, 247 F.3d 134 (4th Cir. 2001).
28. 18 U.S.C. § 922(g)(1).
29. *Gallimore,* 247 F.3d at 136-37.
30. *Id. at* 134, 136-137 (4th Cir. 2001).
31. *Id.*
32. *See* United States v. Jones, 945 F.2d 747 (4th Cir. 1991).
33. *See* United States v. Blue, 957 F.2d 106 (4th Cir. 1992).
34. See United States v. Richardson, 833 F.2d 310, 1987 WL 38924 (4th Cir. 1987).
35. *Id.*
36. 18 U.S.C. § 922(g)(1).
37. United States v. Perrin, 45 F.3d 869 (4th Cir. 1995).
38. United States v. Paollelo, 951 F.2d 537 (3d Cir. 1991); United States v. Panter, 688 F.2d 268 (5th Cir. 1982); United States v. Lemon, 824 F.2d 763 (9th Cir. 1987).
39. Perrin, 45 F.3d at 875.
40. *Id.* at 873-74.
41. *United States v. Crittendon,* 883 F.2d 326, 329-30 (4th Cir. 1989).
42. *Perrin,* 45 F.3d at 875.
43. *Paolello,* 951 F.2d at 542-43.
44. "Any offense punishable by death or imprisonment for a term exceeding one year is a felony". 18 U.S.C. § 1.
45. 18 U.S.C. § 3142(f)(1) (2000).
46. *Id.*
47. Stinson v. United States, 508 U.S. 36 (1993); United States v. Johnson, 953 F.2d 110, 115 (4th Cir. 1992).
48. *See, e.g.,* United States v. Dillard, 214 F.3d 88, 104 (2nd Cir. 2000) (held the risk of violent use posed by a convicted felon's possession of firearms is significant, and therefore a Section 922(g) violation is a crime of violence within the meaning of 18 U.S.C. § 3156); and United States v. Singleton, 182 F.3d 7, 12, 16 (D.C. Cir. 1999) (concluding that a Section 922(g) charge is categorically *not* a crime of violence within the meaning of 18 U.S.C. § 3156, accordingly defendant cannot be detained on that basis).
49. United States v. Aiken, 775 F. Supp. 855, 857 (D.Md. 1991).
50. In an unpublished opinion, United States v. Andre Flood, Crim. No. 97-0479.
51. *See* 18 U.S.C. § 3142(f)(2).
52. *See id.*
53. *Id.*
54. *See* United States v. Clark, 865 F.2d 1433, 1436 (4th Cir. 1989).
55. *See* Arkansas v. Wilson, 514 U.S. 927 (1995).
56. *See* United States v. Lalor, 996 F.2d 1578, 1582 (4th Cir. 1993).
57. *See* Franks v. Delaware, 462 U.S. 213-14 (1983).
58. *See* United States v. Leon, 468 U.S. 897, 923-26 (1984).
59. *See* Franks v. Delaware, 438 U.S. 154-56, 165 (1978).
60. *See* California v. Hodari D., 499 U.S. 621, 629-32 (1991).
61. *See* United States v. Mendenhall, 446 U.S. 544-46, 553-55 (1980).
62. *See* Terry v. Ohio, 392 U.S. 1, 23-24, 30-34 (1968).
63. *See* Delaware v. Prouse, 440 U.S. 648, 654-55 (1979).
64. *See* Michigan v. Long, 463 U.S. 1032, 1034-35, 1050 (1983).
65. *See* Maryland v. Wilson, 519 U.S. 408, 409-415 (1997).
66. *See* New York v. Belton, 453 U.S. 454, 460-463 (1981).
67. *See* Carroll v. United States, 267 U.S. 132, 155-156 (1925).
68. *See* United States v. Ross, 456 U.S. 798, 800, 824 (1982).
69. *See* U.S. SENTENCING GUIDELINES MANUAL § 4B1.4(b) (2002).
70. Defined at U.S.S.G. § 4B1.2(b) (2002), and would include manufacturing, distribution, importation and possession with intent to distribute controlled substances, but would not include simple possession of contraband narcotics.
71. *See* U.S.S.G. § 4B1.2(a) (1987-2002). The statute defines "crimes of violence" as that which a) has as an element the attempted, threatened or actual use of physical force against the person of another, b) is a burglary of a dwelling, arson, extortion or involves the use of explosives, or c) otherwise involves conduct that presents a serious potential risk of physical injury to another.
72. *Id.* at § 2K2.1(a)(2) (2002).
73. *Id.* at § 2K2.1(a)(4)(A).
74. *See id.* at § 2K2.1(b)(4).
75. MD. ANN. CODE Art. 27, § 449(e) (2002).
76. Although the statute imposes no explicit upper limit, the maximum penalty under § 924(e) is life imprisonment. *See* United States v. Blannon, 836 F.2d 843, 845 (4th Cir. 1988).
77. MD. CODE ANN., Criminal Law, § 5-607 (2002).
78. *See* United States v. Mobley, 40 F.3d 688, 694-96 (4th Cir. 1994); United States v. Bowden, 975 F.2d 1080, 1081-82 (4th Cir. 1992).
79. *See* Taylor v. United States, 495 U.S. 575 (1990).
80. *Id.* at 602.
81. *Id.*
82. *See* United States v. Cook, 26 F.3d 507, 509 (4th Cir. 1994).
83. *See* Sizemore v. State, 10 Md.App. 682, 685, 272 A.2d 824, 825 (1971).
84. MO. REV. STAT. § 569.170 (1986).
85. *See* Taylor v. United States, 495 U.S. 575, 589, 596-99 (1990).

86. *Id.* at 598.
87. *E.g.,* United States v. Payton, 918 F.2d 54 (8th Cir. 1990)(holding that a conviction based on breaking and entering of tavern is a "burglary" for Section 924(e) purposes).
88. *See* United States v. Hairston, 71 F.3d 115 (4th Cir. 1995).
89. *See* United States v. Williams, 67 F.3d 527 (4th Cir. 1995).
90. A common-law crime defined as the attempt to elude lawful custody while being arrested. Washington v. State, 87 Md.App. 132, 589 A.2d 493 (1991).
91. A violation of 18 U.S.C. § 924(c) (2002).
92. *Taylor,* at 575, 602.
93. United States v. Bregnard, 951 F.2d 457 (1st Cir. 1991) and United States v. Palmer, 68 F.3d 52 (2d Cir. 1995).
94. *See* Lamb v. State, 93 Md.App. 422, 613 A.2d 402 (1992).
95. *See* United States v. Letterlough, 63 F.3d 332, 335 (4th Cir. 1995).
96. *Id.* at 63 F.3d 332, 335-36.
97. *See* Custis v. United States, 511 U.S. 485 (1994).
98. U.S. SENTENCING GUIDELINES MANUAL § 4B1.4(b) (2002).
99. *Id.* at Section 4B1.4(a), unless the defendant has pled guilty and could thereby benefit from a downward adjustment for acceptance of responsibility per Section 3E1.1.