

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

BARBARA C. DOUDEL,

Plaintiff
(VLB)

v.

Civil No. 3:11-CV-001164

CITY OF NORWALK, et al,

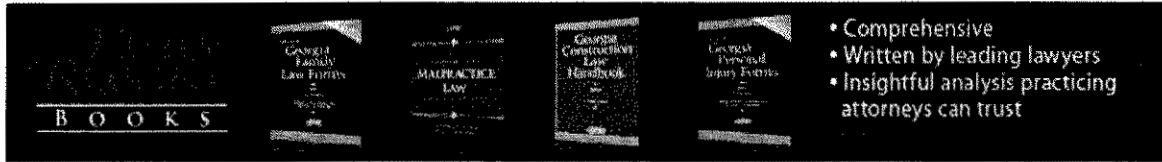
Defendants

EXHIBIT Z

THE DEFENDANTS

By: / S/

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Lawyers struggle to fight gun seizures in Connecticut

Jay Stapleton

The Connecticut Law Tribune

01-29-2013

As Connecticut lawmakers discuss how already-strict state gun laws might be strengthened in response to the Newtown shootings, some lawyers are expecting a spike in firearms confiscations under an existing law.

Connecticut's gun seizure law allows police to take a licensed firearm from someone who is considered a danger to themselves or others and hold it for up to a year. The law was passed in response to the workplace shooting deaths of four people at the Connecticut State Lottery headquarters in 1998. The gunman, Matthew Beck, had a history of suicide attempts.

"This law has been used over 300 times since 1999 and there is no question that it has prevented tragedies from happening," said Mike Lawlor, undersecretary of the state Office of Policy and Management and a former legislator who worked on the gun seizure law. "I'm sure we can beef up the law even more, and I'm sure we will."

According to the state Office of Legislative Research, police in Connecticut applied for seizure warrants 277 times between 1999 and 2009 and confiscated more than 2,000 firearms. Records indicate the use of the warrants gradually increased over the years, ranging from 16 in 2003 to 42 in 2008.

But no gun confiscation records have been compiled since 2009, a situation that the state Judicial Branch is currently addressing.

Chris Duryea, a research attorney for the Judicial Branch, said his office is building a database to keep track of gun seizure cases, replacing an old paper-based system. It will take several months to complete the database, which will allow law enforcement personnel—local, state and federal—to quickly access any prior gun seizure history when dealing with potentially dangerous people.

Additionally, said Duryea, this database will theoretically make it harder for people whose guns were seized in Connecticut from buying weapons in other states. (A separate database, also in the works, will track guns used in specific crimes.)



Work began on the databases last year, well before Ryan Lanza used his mother's semi-automatic rifle and handgun on Dec. 14 to kill 20 students and six educators at Sandy Hook Elementary School. No one is saying yet whether Lanza showed enough outward signs of mental instability to justify removing guns from the home where he lived with his mother. If he did, there is no record that any effort was made to have the guns seized.

While the database was in the works long before the Newtown shooting, the tragedy has "allowed some of our local parties in the court to become more supportive" of the database project, Duryea said. "It's timely," he said. "We're rolling up our sleeves to get it done."

Ruling out alternatives

Lt. Paul Vance, a Connecticut State Police spokesman, said officers take very seriously complaints about an unstable person having access to guns. In such cases, he said, the troopers will ask the person to turn over the firearms. "If you don't forfeit the firearms, we'll seize them and hold them until such time as they can be turned over to a responsible person," he said.

The troopers complete a report which is presented at a subsequent court hearing, at which a judge decides how long the guns should be held—up to a year.

Most of the calls come from spouses, he said, usually wives. The most common type of behavior in the complaint is that the person is suicidal.

State troopers aren't the only ones permitted to seize weapons. The law allows any two police officers, or a prosecutor, to get warrants and seize guns from anyone who poses a risk of injuring himself, someone else, or an animal.

The warrant can be sought only after the officers conduct an investigation to establish that probable cause of a risk exists, or after they rule out a reasonable alternative. An alternative, police say, would be if the person voluntarily agrees to surrender the weapon.

Before issuing a warrant, a judge determines whether violent acts were committed, whether a gun was displayed and whether a person has a history of unstable behavior.

In one notable case, a man was reported by his landlord to Berlin, Conn., police in 2004 for allegedly stating, "I am going to kill myself and take a few people with me." Police obtained a warrant and seized 18 guns from the man.

Four years later, a man called police in New Milford, Conn., "to report strange sightings, including trucks coming out of the ground and shape-changing trailers on his property." He threatened to shoot people in the trailers. Four guns were seized.

In the decade-long period tracked by the Office of Legislative Research, judges refused to grant the warrants only twice, a statistic that troubles advocates for gun owners.

Attorneys who have represented people trying to get their firearms back agree it can be difficult to fight a seizure warrant in court. Though the initial confiscation can be appealed, judges are reluctant to return weapons before the one-year maximum confiscation period has passed.

According to the state Office of Legislative Research, only in 22 instances between 1999 and 2009 were weapons returned more quickly than that. After a year, authorities either return the firearms to the former owner or—after a hearing—destroy them, if there's evidence that the former owner is still unstable.

Attorneys say most weapons are returned to their owners at some point.

'Cover your tail'

Rachel Baird is a solo practitioner in Torrington, Conn., who has handled dozens of gun seizures over the past decade.

"I definitely think you're going to see more" seizure warrants filed in the wake of the Newtown shootings, she said. "I think it's clear. It's going to affect the police because they're going to make more seizures, and it's going to affect the courts because the judges are going to be more reluctant to give people their guns back. It's a cover-your-tail kind of thing."

The problem is, the constitutional rights of those who own firearms legally get trampled on in the process of seizing the weapons before warrants get signed, she said. "This is essentially carving out an exception to the Fourth Amendment."

During the year after the confiscation, the gun owner can't legally buy or own another weapon, which impact other rights. Beyond that, Baird notes, after someone has been served a risk warrant and had a gun seized, they are no longer allowed to obtain a license to carry firearms outside of the home. "So you lose your right to defend yourself" when out in public, she said.

Baird is concerned that the law, as it exists now, is already ripe for abuse. "I have a recent case where a person said he wasn't [previously] concerned about my client's guns but he started to think about Newtown and then he called the police."

She also represents a woman, Barbara Doutel, in a federal lawsuit that claims Norwalk, Conn., police violated Doutel's constitutional rights to possess a firearm to protect her home when they seized her guns because of a complaint against her husband.

"From my perspective, if the government wants to take peoples' guns away, let's just say that's what they want to do, instead of hiding behind the seizure law," Baird said.

Other lawyers who handle gun cases are also bracing for increased use of the seizure law and other gun-related statutes. "I have noticed that firearms violations are already attracting more attention and efforts of state and federal law enforcement," said New Haven lawyer Jon Einhorn. "There's more scrutiny of anything involving guns than there was previous to Newtown."

Craig Fishbein, a Wallingford, Conn., lawyer who represents clients with gun-related matters in civil and criminal court, said he doesn't think the gun seizure law could have been used to prevent the Newtown shootings. "We're talking about stolen implements in this case," he said. "You could be the most sane person in the world and someone steals your gun and uses it. How do you prevent that?"

But like others, he's watching to see if the Newtown tragedy has any bearing on how the current laws are enforced. "I would hope that the [seizure] statute won't be used improperly," he said. "We have a system in place that appears to be operating appropriately and now all of this talk comes up as speculation because of the events of Dec. 14."

Jay Stapleton writes for The Connecticut Law Tribune, a Daily Report affiliate.



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Second Amendment Experts Say Lawyer's Arrest Illustrates Misunderstood Gun Laws

ON 17 AUGUST 2012.



Immediately after New Haven immigration attorney Hwang was arrested with a gun tucked in his waistband at a theater showing 'Dark Knight Rises,' his lawyer denied the actions of police officers as "baseless."

Tensions were high from the start; especially since the incident occurred two weeks after a man shot and killed a dozen people and injured 58 at a showing of the same movie in Colorado. The officers had responded to the Criterion-Bow Tie Cinemas in New Haven shortly after 10 p.m. on a call about a man inside with a gun. When the police officers arrived, they said, Hwang was talking on his cell phone. Police said because Hwang did not stand up and put his arms up when initially asked, he was arrested on charges of breach of peace and interfering with police officers.

Now, the case is drawing attention to a conflicted understanding of Connecticut's gun laws. Gun law experts say it is rare to see law-abiding citizens openly carrying guns in public as well as getting arrested for it.

"I think these instances are exceedingly rare," said Danbury attorney Andrew Buzzi, Jr., whose practice includes gun-related issues. "For 40 years or so I can't recall many incidents, if any, of real open carry issues here in Connecticut. This isn't something that's been an issue."

However, other second amendment experts say when incidents do happen, the charges are typically breach of peace stemming from the lawful carrying of a gun. Those misdemeanors are tough to prove and prosecutors usually drop the charges.

Whether that happens in Hwang's case remains to be seen. He was arraigned last week and the prosecution agreed to turn over evidence to Hwang's defense lawyer, Hugh Keefe, prior to the next scheduled court date Sept. 5.

"I can tell you in my experience, I've had cases where people have not been charged at all, or people have been charged with breach of peace," said Craig C. Fishbein, of the Fishbein Law Firm in Wallingford. "I've never seen one of those cases prosecuted. They've all been dismissed."

Fishbein explained that Connecticut is not a conceal carry state, meaning a person with a permit in the state is not required to keep the weapon hidden from view, despite what many people mistakenly think. He said some municipalities, including New Britain, have enacted their own ordinances banning the carrying of guns in plain view.

Torrington attorney Rachel Baird said, in her view, police are not knowledgeable enough about the gun laws in the state.

"I think it's fair to say most people just assume this is a conceal carry state," said Baird. "... But the law doesn't say that. If you have a valid permit to carry you can carry."

"I do depositions with police officers and some say it's legal, some do not," continued Baird, noting that she's even considered bringing a lawsuit against the Police Academy. "Someone needs to teach police officers what the laws are. Every time they do something like this, they can always fall back on qualified immunity and say [the law's] confusing in Connecticut."

Baird said the Torrington Police Department was the first in the state to send out a memo to its officers reminding them that Connecticut is an open carry state and arrests should not be made solely on that basis. She said a similar memo was later issued in Wethersfield.

A few years ago, Baird filed a civil lawsuit in U.S. District Court in Connecticut on behalf of a client who was charged with breach of peace after openly carrying a gun into a Chili's restaurant.

James F. Goldberg had the gun on his waist out in the open on June 21, 2007 at the Glastonbury Chili's. The restaurant manager called police and began moving patrons away from where Goldberg was sitting.

Similar to Hwang's arrest, police ordered Goldberg to stand and raise his hands above his head. An officer seized the weapon.

"Because of the large commotion created and distress to staff and customers" read the police report, Goldberg was arrested for breach of peace. Baird said the charge was dropped at the first court hearing after the arraignment; though court documents indicate that Goldberg agreed to pay a \$500 charitable donation in exchange for the dismissal of charges.

Baird filed a civil lawsuit on Goldberg's behalf against the town of Glastonbury and the police officers for false arrest and unreasonable search and seizure. Defense lawyer Thomas Gerarde, of Howd & Ludorf in Hartford, represented the town of Glastonbury and filed a motion for summary judgment, citing qualified immunity. Judge Stefan R. Underhill granted the motion. Baird appealed but the ruling was upheld.

"It's not against the law to carry a handgun out in the open but those who carry handguns out in the open should realize that if they recklessly create the risk of alarm, they've committed a breach of the peace," Gerarde told the Law Tribune at the time. "The average citizen who sees a man in a uniform with a handgun doesn't think anything about it... you see an everyday guy with everyday clothes on carrying a weapon, that tends to scare them."

Underhill's decision, however, certainly did not curtail the debate on the issue. Fishbein noted that police officers can arrest someone for just about anything. But if it's ultimately not illegal, the case won't go anywhere.

"Prosecutors in general don't want to prosecute things that are not crimes," Fishbein said. "When someone is a lawful permit holder and in a structure or property that doesn't bar them from exercising their rights, it's not a crime no matter how others perceive it."

Fishbein noted another case, Richard Burgess, who was arrested for disorderly conduct after openly carrying a gun while inside a Wallingford pool hall. That charge was dismissed at the arraignment. Burgess has a pending federal lawsuit stemming from his arrest.

Fishbein said there's a downside even if the criminal charges ultimately get dismissed.

"The collateral situation that happens however is that people's pistol permits are revoked upon the arrest," said Fishbein.

If a person wants to apply to get their permit back, they must go before the Board of Firearms Permit Examiners, which meets at either State Police headquarters in Middletown or at the Wethersfield Police Department on the second Thursday of each month, Fishbein said.

"There's quite a backlog," said Fishbein. "I had one client who I got his charges dismissed and they still made him wait the three years to get a hearing on the pistol permit." Fishbein said the last he had heard the backlog was down to about a year.

Buzzi, the Danbury lawyer, said despite the recent scares in movie theaters, it may not be wise for private property owners to ban guns, though they have the right to do so.



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"Are you making the theater safer by saying you don't want your patrons carrying guns?" said Buzzi. "Is the person intent on going in and creating a crime in a movie theater going to listen to that sign out in front of the movie theater? No. The law abiding citizens will see that and respect the wishes of the private owner. So what you're doing is making them less safe."

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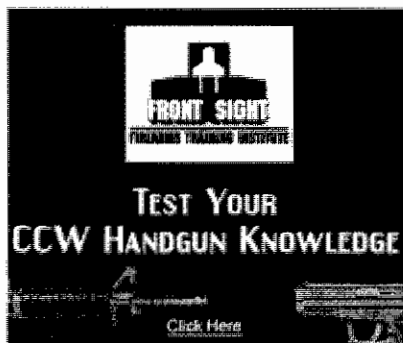
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The Police Officer Standards
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The Police Officer Standards and Training Council: A Failure to Train

Summary of the Case

James F. Goldberg entered a Chili's Restaurant in Glastonbury, Connecticut, on the night of June 21, 2007, to place an order for food to take with him from the restaurant. The Chili's manager, Laura Smith, noticed that Mr. Goldberg carried a handgun into the restaurant on his side secured in a holster. Ms. Smith called 911 emergency dispatch and inquired whether it is legal in Connecticut to openly carry a firearm. Ms. Smith did not complain during the call that Mr. Goldberg acted in a threatening manner and no complaint followed from Ms. Smith or anyone else that Mr. Goldberg acted in a threatening manner. Mr. Goldberg presented a valid state permit to carry pistols and revolvers upon the arrival of the responding police officers. The officers seized Mr. Goldberg's handgun and state permit and placed Mr. Goldberg under arrest for the criminal offense of Breach of Peace in the Second Degree. A summary of the issues and the facts of this case are described further in a Request for Assistance submitted to the National Rifle Association Civil Rights Defense Fund. The NRA responded to Mr. Goldberg's request on May 9, 2011.

Federal Trial Court Decision

Mr. Goldberg filed a federal complaint in 2007 alleging violations of his Fourth Amendment right to be free from unreasonable search and seizure. As a result of a September 17, 2010, decision by federal district court Judge Stefan R. Underhill finding that Mr. Goldberg's mere act of lawfully bearing a pistol in a public place constituted *per se* reckless conduct, the government was granted apparent authority in Connecticut to detain and arrest individuals based on lawful conduct when that conduct involves the exercise of a Second Amendment right. This exception created by the district court and termed in Mr. Goldberg's Brief to the appellate court as the "Goldberg exception" to the Fourth Amendment grants unfettered authority to the government to detain any individual exercising his or her Second Amendment right to bear arms absent any indicia of criminal conduct. Judge Underhill issued his decision from the bench on September 17, 2010, following oral argument by the parties.

Appeal to the United States Court of Appeals

Mr. Goldberg presented two issues in his appeal: (1) Was the investigatory stop conducted by the three Town of Glastonbury police officers justified at its inception and, if so, reasonably related in scope to the circumstances which justified the interference in the first place? (2) Did the three police officers have probable cause to arrest Mr. Goldberg? Mr. Goldberg filed a Brief and Special Appendix with Volume One and Two of a Joint Appendix on March 24, 2011. The Joint Appendix contains three-hundred-thirty pages of documents relevant to the appeal including police reports and deposition transcripts. Oral argument was held on November 21, 2011, in New York before The Honorable Jan O. Newman, The Honorable Ralph K. Winter, and The Honorable Robert A. Katzmann. The appellate court issued a decision on December 13, 2011, affirming the federal district court opinion of Judge Underhill. In the appellate decision, the court did not decide whether there was probable cause to arrest Mr. Goldberg because it concluded that the Town of Glastonbury and its officers were entitled to qualified immunity. According to the court, "[o]n these facts, and given the lack of settled Connecticut law on the issue, we conclude that reasonable officers could, at minimum, disagree on whether there was probable cause to arrest plaintiff for breach of the peace in the second degree, and accordingly the district court's qualified immunity determination ought to be affirmed."

Peruta v. Commissioner of Public Safety

In a state court case, Edward A. Peruta had attempted prior to the December 13, 2011, federal appellate court decision in Goldberg v. Glastonbury to settle the law in Connecticut by asking: "Whether a Connecticut state permit holder has the right in Connecticut to carry a pistol or revolver openly, without concealing the pistol or

revolver, in any location where carrying a pistol or revolver is not otherwise prohibited by the premises' owner or by law." The appellate court decided on May 24, 2011, that "depending on the specific circumstances, a person who openly carries a pistol conceivably may be subject to arrest for violating several statutes, even if section 29-35 does not prohibit a permit holder from carrying a pistol openly." The court avoided the issue by placing the burden upon Mr. Peruta to supply the Department of Public Safety with specific factual circumstances to determine if the open carry of a firearm is lawful.

Conclusion

In Goldberg v. Glastonbury the federal appellate court determined that the law in Connecticut is not settled. This resulted in a finding that the Glastonbury police officers would not be held liable for any infringement of Mr. Goldberg's Fourth Amendment rights. In Peruta v. Commissioner of Public Safety state appellate court placed the burden on individuals such as Mr. Peruta to use private funding and resources to settle the law by thinking of every conceivable set of circumstances under which an individual may engage in the lawful open carry of a handgun and then filing a petition to the Department of Public Safety requesting a ruling on whether or not under the circumstances described an individual would be placed under arrest. The Torrington Police Department and the Wethersfield Police Department have issued training memorandums addressing and clarifying this issue since it was raised in Goldberg v. Glastonbury.

But the same cannot be said for the Police Officer Standards and Training Council (POST Council). As recently as April 12, 2012, a Norwalk Police Department officer and 2010 graduate of the training academy, testified that Connecticut state statutes specify a permit that allows for only the concealed carry of a pistol or revolver by permit holders while open carry requires no permit at all. As long as the law remains unsettled and police officers remain untaught and confused, arrested individuals bear the burden of the unsettled law. Courts will find, as the courts did in Goldberg v. Glastonbury, that the unsettled status of the law provides an excuse for law enforcement, relieving law enforcement of accountability for violations of individual rights.

Posted by Rachel M. Baird, Attorney at 4:30 PM

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CT Law Allows Permitted Gun Owners to Carry Weapons Openly... Technically

by Hugh McQuaid [Aug 17, 2011 11:00am
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In Connecticut there is nothing in the law that explicitly prohibits anyone with a valid pistol permit from sauntering down Main Street with a revolver strapped openly to their waist. But the state's top criminal justice official wouldn't recommend it.

Unless such a person was walking into a gun club, carrying a firearm openly in Connecticut will almost certainly attract the police and result in a breach of peace charge, said Michael P. Lawlor, Gov. Dannel P. Malloy's undersecretary of criminal justice.

"In almost every situation you can imagine this happening in, it qualifies as breach of peace," he said. "If you walk into a restaurant with a gun it's almost by definition a breach of peace."

That results in an arrest and sets in motion a chain of events that usually results in the revocation of an issued pistol permit, he said. And that's the way it should be. Lawlor said. Anyone who walks into a McDonalds plainly carrying a firearm either intends to alarm people or is irresponsible, he said.

Not everyone sees it that way. A man charged with disorderly conduct by the Wallingford police after he carried a pistol into a pool hall there is currently suing the department in federal district court for false and malicious arrest.

The lawsuit, filed on behalf of Richard E. Burgess, names the town, five members of the department and a bail bondsman who was at Yale Billiards and called the police.

According to the suit, Burgess and his girlfriend went to the pool hall in May of last year. At that time he was carrying a valid Connecticut pistol permit. He was also carrying a clearly visible handgun and two spare magazines, it said.

The gun attracted some attention. Robert Hilton, the owner of the pool hall, asked him to conceal the weapon but Burgess declined, saying the law doesn't require him to hide it, the lawsuit said.

Hilton went to call the police to figure out whether carrying the gun openly was indeed legal and the bondsman, Mark Vanaman, approached Burgess, it said.

"Vanaman told Burgess to conceal his handgun or he would call the police. Burgess instructed Vanaman to leave him alone and to feel free to call the police," the lawsuit said.

He did and some time later the police arrived, confiscated the weapon, cuffed Burgess and charged him with disorderly conduct, the suit said.

Nine days later the charge was dismissed in court after a prosecutor told the judge the case lacked probable cause, it said.

The lawsuit contends that the arrest was unlawful and the officers had no right to search Burgess and seize his property. Rachel Baird the attorney representing Burgess in the lawsuit never returned repeated phone calls for comment on the case.

But according to the Wallingford police department, Burgess has since had his gun returned to him.

The town is at fault also because it failed to train its officers on Connecticut's gun laws, the lawsuit claims. It cites a transcript of police radio communications on that day where officers seem unsure of how the law reads and one officer refers to the permit as a "concealed weapons permit."

In the end, they agreed that either way a breach of peace charge was in order but a lieutenant recommended "[taking] it a step further and maybe come back in and call uh, the state police and maybe talk to one of the guys in the know there."

When asked in a phone interview last week if people are allowed to openly carry firearms with a permit, state police spokesman Lt. J. Paul Vance said, "Good question."

"Does it frighten people? Yes," he said. "There is no standard quick answer to this question."

People are not used to seeing folks in Connecticut carrying guns openly, he said, adding that 99.9 percent of people legally allowed to carry firearms choose to conceal them.

Vance said people should use caution when openly carrying firearms. If someone were to walk into a bank with a pistol even partially exposed they would certainly raise some eyebrows, he said.

"It's not a funny situation. It's a dangerous deadly weapon not to be made light of," he said. "There are some people who are definitely afraid of firearms and they have their rights too."

The issue begs a question: If carrying a gun openly in Connecticut is legal but, as Lawlor said, in most cases it results in a breach of peace charge, why is it legal?

Lawlor likened the issue to people who choose to keep dangerous snakes as pets. The law may not specifically state that bringing a dangerous snake into a restaurant full of people is illegal, but it could still get you arrested.

Laws pertaining to the carrying of handguns vary from state to state. Many require weapons to be concealed.

Lawlor, a former lawmaker, said that personally he was no fan of guns but said he wasn't inclined to have a discussion in the legislature over changing the law. It would be a difficult sell for gun rights activists, who he conceded raise some valid points. If taking out a gun is illegal under any circumstances, why would people carry them, he asked.

He said he prefers the way the law is written now, where it is on the gun owner to behave responsibly.

"You want to have a gun? Fine, but you have to accept the responsibility that goes with it."

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