

## **Some Thoughts on Firearms Laws and Enforcement**

**By Wayne Buchanan Eads  
Attorney at Law**

Firearms offenses are being prosecuted more often and more harshly now than ever before. Some firearms offenses, such as assaults with firearms, have always been vigorously prosecuted, with good reason. Some firearms offenses, not involving use of firearms but usually only involving possession or transportation of the weapons, if brought in past years, were easily negotiated down to less serious offenses, or the penalties imposed were often nothing more than a fine and court costs. In most situations, that is no longer true.

Today society is confronted with various issues that have caused the legislatures and prosecutors, both state and federal, to take another look at gun laws and enforcement of those laws. One reason is because of the increasing and well-documented increase in gang-related violence. Another is because of security concerns which have taken center stage since the terrorist attacks that knocked down the twin towers of the World Trade Center. A third reason is because of the increasingly vocal lobbying of numerous anti-gun groups. For these reasons, and many more, the laws relating to using and carrying firearms have changed, and society's attitude towards prosecuting such offenses has also changed. This column will review some of the issues involved in firearms offenses.

One significant issue that arises repeatedly, especially in federal court, involves the situation where a crime is committed while the accused carries, uses, or brandishes a firearm, even if no injury occurs to anyone. This is seen most often in drug cases where the person committing the drug offense was armed with a firearm. Whatever the penalty for that particular offense would have been, without involvement of a firearm, that penalty is increased by a mandatory minimum of five years because of the firearm.<sup>1</sup> A second offense of a federal drug crime committed while armed will result in a penalty for the drug crime plus an additional, mandatory, and consecutive sentence of not less than twenty-five years.<sup>2</sup>

A second issue involves a change that was been made by the North Carolina General Assembly in 2004 in order to make state law regarding convicted felons in possession of firearms conform to federal law. State law used to allow a person, even if he had previously been convicted of a felony, to possess certain firearms inside his residence or place of business for home security and personal protection purposes.<sup>3</sup> That type of possession is no longer allowed because the state statutes were changed to make illegal the possession of ". . . *all* firearms by any person convicted of any felony, even

---

<sup>1</sup> 18 United States Code 924(c)(1)(A).

<sup>2</sup> 18 U.S.C. 924(c)(1)(C)(I).

<sup>3</sup> N.C. General Statute 14-415.1(a).

within the convicted felon's own home and place of business.”<sup>4</sup> [Emphasis in original] This statute was amended again in 2006 to exempt “antique firearms” as defined in N.C. General Statute 14-409.11, but that amendment will have to be the subject of another article.

To add more confusion to that change, in a recent North Carolina Supreme Court case, an individual challenged the 2004 amendment based on the specific facts of his own circumstances.<sup>5</sup> Having been convicted of a felony in 1982, and having had his civil rights restored in 1987 pursuant to the then-applicable laws, the challenge alleged that the amendment was unconstitutional as applied to him, and that he should be allowed to possess firearms under some circumstances. The Supreme Court agreed, reversing the rulings against him and permitting some possession of firearms by that specific challenger. It does not appear that this ruling has been the subject of further proceedings requested by the State of North Carolina, but it also appears that this ruling is limited in scope to the appellant in that case and not to the general public.

Another change in state statutes in recent years involves the law which historically always prohibited the concealed carry of any handgun. Now concealed carry of a handgun remains prohibited for everyone except permit holders. If the person carrying such firearm has in his possession a valid concealed carry permit issued pursuant to state law by the sheriff of one of the 100 counties in North Carolina, then concealed carry of a handgun is legal. The law has allowed concealed carry permits to be issued since 1997.<sup>6</sup> Similarly, North Carolina law allows reciprocity so that a resident of another state, if he possesses a validly-issued concealed carry permit from his state, can lawfully carry his firearm concealed while visiting in or traveling through the State of North Carolina.<sup>7</sup> In order to obtain a concealed-carry permit in the State of North Carolina, a person must first qualify by proving several facts, including, but not limited to the following: (1) he is a citizen of the United States; and (2) he has successfully completed an approved firearms safety and training course. A person is disqualified from being issued a concealed carry permit if, among other things, (1) he is under indictment; (2) he is a convicted felon; or (3) he uses illegal drugs or is a drug addict.<sup>8</sup>

It should be emphasized here that a permit to purchase a firearm does not entitle the owner of that firearm to carry such firearm concealed on his person or transport it concealed in his vehicle. No concealed carry of any handgun is permitted until the person obtains both a permit to purchase the firearm and a separate permit to carry it concealed. Concealed carry includes both personal carrying and certain types of transporting the firearm in a vehicle. Even with the proper permit, however, it is not an unlimited right. Courthouses, other public buildings, and certain other locations can

---

<sup>4</sup> N.C.G.S. 14-415.1(a) and 18 U.S.C. 922(g)(1).

<sup>5</sup> *Britt v. North Carolina*, \_\_\_ N.C. \_\_\_ (August 28, 2009), on appeal to the N.C. Supreme Court from a divided panel of the N.C. Court of Appeals, 185 N.C.App. 610, 649 S.E.2d 402 (2007)

<sup>6</sup> N.C.G.S. 14-415.11.

<sup>7</sup> N.C.G.S. 14-415.24.

<sup>8</sup> N.C.G.S. 14-415.12(b).

lawfully restrict the entry of persons carrying concealed weapons even if those persons have a valid permit.<sup>9</sup>

If a firearm is concealed in the vehicle's unlocked glove box, under the seat, or anywhere in the passenger area that is accessible to the driver, that is concealed carry and is illegal without a permit. Firearms can lawfully be transported in plain view or in a vehicle's locked trunk area so long as no illegal use is involved, they are not stolen, and they are otherwise legal for that person to own, possess, transport, or use.

One set of laws that have not significantly changed but which are now much more rigorously enforced are the laws restricting or denying the rights to own, possess, transport, or use any firearms by illegal aliens and other prohibited persons. If an alien was not admitted lawfully into the United States, then that person cannot legally own, possess, transport, or use any type of firearm anywhere in the United States, under any circumstances.<sup>10</sup>

Additionally, if that alien was lawfully admitted but then overstayed his permission to remain in the United States, then it is unlawful for that alien to own, possess, transport, or use a firearm after the expiration of his permission to remain in this country. Furthermore, even if an alien was admitted lawfully and remains lawfully in the United States, pursuant to a non-immigration visa, that person is also prohibited from owning, possessing, transporting, or using firearms.<sup>11</sup> These firearms offenses carry significant penalties, even for a first offense. And, if the person violating those statutes already has three separate, prior convictions for any crime classified as a felony, then that person will be imprisoned for a mandatory minimum term of not less than fifteen years under federal law.<sup>12</sup>

To review, all undocumented aliens in the United States should pay particular attention to the fact that they cannot lawfully own, possess, transport, or use any firearm, and to do so is illegal in the United States. Citizens should pay attention to the restrictions applying to certain persons, such as convicted felons, those who are mentally incapacitated, or persons subject to domestic violence protection orders. And those wishing to carry a concealed firearm must first get a permit to purchase the firearm and then get a permit to carry it concealed, both of which permits can be obtained from the sheriff in the county where the applicant resides.

---

<sup>9</sup> N.C.G.S. 14-415.11(c).

<sup>10</sup> 18 U.S.C. 922(g)(5)(A).

<sup>11</sup> 18 U.S.C. 922(g)(5)(B).

<sup>12</sup> 18 U.S.C. 924(e)(1)