DOMESTIC VIOLENCE

Voisine v. U.S., --- U.S. --- (2016)
Decided June 27, 2016

FACTS: Voisine pled guilty in 2004 for assaulting his girlfriend in Maine. The specific Maine crime made it a misdemeanor offense to ""intentionally, knowingly or recklessly cause[ ] bodily injury or offensive physical contact to another person." During a subsequent, unrelated criminal investigation, it was discovered he owed a rifle. When a background check revealed the 2004 conviction, he was charged with possession of the weapon. In 2008, Armstrong took a guilty plea in a similar situation, and again, guns were found in a criminal investigation. Both men argued that they were "not subject to [18 U.S.C.] §922(g)(9)'s prohibition because their prior convictions (as the Government conceded) could have been based on reckless, rather than knowing or intentional, conduct." In both cases, the District Court disagreed. Both took a conditional guilty plea and appealed.

The First Circuit U.S. Court of Appeals affirmed the pleas, "holding that "an offense with a mens rea of recklessness may qualify as a 'misdemeanor crime of violence' under §922(g)(9)." Following the decision in U.S. v. Castleman, the case was remanded back for reconsideration, but it was once again affirmed.[1]

Voisine and Armstrong sought certiorari, and the U.S. Supreme Court granted review.

ISSUE: Does a reckless assault conviction under domestic circumstances invoke the federal gun ban?

HOLDING: Yes (but see note)

DISCUSSION: The Court began by noting that the issue before it was "whether §922(g)(9) applies to reckless assaults, as it does to knowing or intentional ones. To commit an assault recklessly is to take that action with a certain state of mind (or mens rea)—in the dominant formulation, to "consciously disregard[ ]" a substantial risk that the conduct will cause harm to another." As such, the Court agreed that a "reckless domestic assault qualifies as a "misdemeanor crime of domestic violence" under §922(g)(9)."

The Court agreed, however, that "the force involved in a qualifying assault must be volitional; an involuntary motion, even a powerful one, is not naturally described as an active employment of force." The term "use" "does not demand that the person applying force have the purpose or practical certainty that it will cause harm, as compared with the understanding that it is substantially likely to do so. Or, otherwise said, that word is indifferent as to whether the actor has the mental state of intention, knowledge, or recklessness with respect to the harmful consequences of his volitional conduct."

[1] 134 S.Ct. 1405 (2014).

The Court agreed that "Congress enacted §922(g)(9) in 1996 to bar those domestic abusers convicted of garden-variety assault or battery misdemeanors—just like those convicted of felonies—from owning guns." At that time, and as of now, "a significant majority of jurisdictions—34 States plus the District of Columbia—defined such misdemeanor offenses to include the reckless infliction of bodily harm." Since the "federal ban on firearms possession applies to any person with a prior misdemeanor conviction for the "use . . . of physical force" against a domestic relation. §921(a)(33)(A). That language, naturally read, encompasses acts of force undertaken recklessly—i.e., with conscious disregard of a substantial risk of harm. And the state-law backdrop to that provision, which included misdemeanor assault statutes covering reckless conduct in a significant majority of jurisdictions, indicates that Congress meant just what it said. Each petitioner's possession of a gun, following a conviction under Maine law for abusing a domestic partner, therefore violates §922(g)(9)."

The Court affirmed the pleas.

NOTE: Although in most states, apparently, reckless conduct is that where an individual consciously disregards a risk of which they are aware, in Kentucky, that is not the case. In Kentucky, the conduct and mental state described in the cases at bar would more properly be classified as "wanton" – as defined in KRS 501.020(3). As such, it is questionable whether under Voisine, that a subject convicted of a Reckless Assault under KRS 508.030(1)(b) would be subject to the ban under 18 U.S.C. §922(g)(9).

FULL TEXT OF DECISION: http://www.supremecourt.gov/opinions/15pdf/14-10154_19m1.pdf