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United States District Court

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WEST DIV. DAYTON

FOR THE

SOUTHERN DISTRICT OF OHIO

CIVIL ACTION FILE NO. C-3-78-125

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE (1) U.S. (TRW) 7.62mm M-14 NATIONAL MATCH
RIFLE, SERIAL NO. 1453711,

Defendant,

Robert E. Sauerman,

Party in Interest.

JUDGMENT

This action came on for trial (~~hearing~~) before the Court, Honorable Timothy S. Hogan, United States District Judge, presiding, and the issues having been duly tried (~~heard~~) and a decision having been duly rendered,

It is Ordered and Adjudged that the complaint be dismissed at the costs of of the plaintiff.

That the defendant NM Rifle S/N 1453711 be returned by the United States to the claimant and Party in Interest, Robert E. Sauerman.

Attorney's fees will not be awarded as costs or otherwise.

This judgment is stayed, on the Court's own motion, for a period of ninety (90) days to permit an appeal and, if an appeal is perfected within that time, it is stayed pending final disposition of such appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MAY 20 1 57 PM '80

SW. 1111
N. 1111

UNITED STATES OF AMERICA,) NO. C-3-78-125

Plaintiff,)

v.)

ONE (1) U. S. (TRW) 7.62mm)
M-14 NATIONAL MATCH RIFLE,)
SERIAL NO. 1453711,)

JUDGMENT AND STAY

Defendant.)

ROBERT E. SAUERMAN,)

Party in Interest.)

In accord with a Memo (containing Findings and
Conclusions) filed this date -

- A -

It is adjudged that the complaint be dismissed at
the costs of the plaintiff.

- B -

That the defendant NM Rifle S/N 1453711 be returned
by the United States to the claimant and Party in Interest,
Robert E. Sauerman.

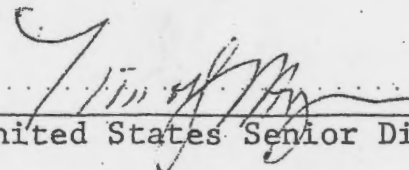
- C -

Attorney's fees will not be awarded as costs or
otherwise.

- D -

This judgment is stayed, on the Court's own motion,
for a period of ninety (90) days to permit an appeal and, if

an appeal is perfected within that time, it is stayed pending final disposition of such appeal.


United States Senior District Judge

MAY 20 1 57 PM '80

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

UNITED STATES OF AMERICA,)	NO. C-3-78-125
Plaintiff,)	
v.)	
ONE (1) U. S. (TRW) 7.62mm)	
M-14 NATIONAL MATCH RIFLE,)	<u>M E M O</u>
SERIAL NO. 1453711,)	
Defendant.)	
ROBERT E. SAUERMAN,)	
Party in Interest.)	

At the time of pertinence here 26 U.S.C. § 5861(d) prohibited as unlawful the "receipt or possession" of a "firearm" not registered in accordance with the requirements of the National Firearms Act.

Title 26 U.S.C. § 5845(a) defined "firearms" and included as (6) was and is a "machine gun."

Title 26 U.S.C. § 5845(b) defined the term "machine gun" as meaning "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger . . ."

The "party in interest" in this case, Robert E. Sauerman, is a citizen of considerable substance. He is a Chemical Engineer and a practitioner of his profession. In

licensed firearms dealer and holds a dealer's license for automatic weapons.

In 1973 or '74 Sauerman purchased an "M-14 NM" rifle - the defendant in this forfeiture case; sometime later he purchased another one which he sold to a dealer in Chicago. Neither was registered. The Chicago dealer inquired as to the legality of the transaction - raising the question whether the article was an "automatic" rather than a "semi-automatic." Sauerman assured him it was a semi-automatic (i.e., will fire only one shot in response to one trigger action) and in furtherance of a desire to set the question officially at rest Sauerman, in 1977, advised the Federal Bureau of Alcohol, Tax & Firearms of his action and informed them that he was in possession of the unregistered M-14 NM purchased in 1974. The Bureau took the position that the defendant was a machine gun and proceeded to confiscate it at the Gun Shop of the Party in Interest near Dayton.

Sauerman went through the proper procedure to claim his rifle from the confiscation and the United States thereupon filed this case for forfeiture of the defendant.

The "issue" has been the subject of a full evidentiary trial, briefs and proposals. It is:

Is the Defendant, One U.S. (T.R.W.) ^{1/} 7.62mm M-14 National Match Rifle, S.N. 1453711, a machine gun - as that term is defined above, i.e.,

^{1/}

The "T.R.W." indicates that the manufacturer is "T.R.W., Inc." of Cleveland.

(a) will it, without manual reloading, shoot automatically more than one shot, by a single function of the trigger?

or

(b) was it designed so to do?

or

(c) can it be readily restored so to do?

If the answer to any of the three questions be in the affirmative the complaint of the United States for forfeiture and condemnation must be granted; if the answer to each be negative the claim of the Party in Interest must be sustained and the rifle returned by the United States to Sauerman.

Facts (Findings)

The parties have developed considerable technical detail in the evidence, as should have been. We do not believe it would be of any substantial help to attempt to describe the detail. There is a great deal of agreement on most of the ultimate facts.

The M-14 rifle was developed by and/or for the United States Army in the fifties as a basic infantry weapon. While it was "designed primarily for semi-automatic fire," it could be - and generally was - made convertible to fire automatically through the installation of a "selector." It

was a relatively simply operation and required only the use of a "punch" and the following of some simple directions to convert the M-14 from semi-automatic to automatic and/or from automatic (once it had been converted) back to semi-automatic only. The M-14 was manufactured by a number of manufacturers and was and is unquestionably a "machine gun." Via simple adjustments it could be changed from a semi-automatic to an automatic or vice versa and the simple adjustments were made to movable or adjustable built-in parts and easily. It would shoot automatically and was designed so to do.

The M-14 turned out to be an extremely accurate weapon. The Army has, for generations, encouraged citizen training and military familiarity and that includes sponsoring National Rifle Matches, National Rifle Teams, and Junior and Senior Rifle Associations. It was decided to modify the M-14 (military or infantry version) so that the basics of the weapon became match usable. The M-14 was to be modified or converted for civilian marksmanship use and in that form was to be and was known as the M-14 N.M. 2/ The defendant in this case is an N.M.

A - Present Form

There is no serious contention that the NM - the defendant - is an automatic. It simply will not as it exists fire more than one shot per trigger pull, without reloading manually.

B - Design

The NM is basically the M-14 service rifle with the exception of a welding operation performed on the selector shaft lock, the selector shaft retaining pin and the selector shaft. The welding operation will render the rifles inoperable of full automatic fire, since the selector may no longer be assembled thereto. The NM version embodied the above described modification and was further refined in a number of ways to effect match target quality. (The changes called for some handiwork fitting during manufacture, strict component selection, special barrels, etc.)

While the "basics" were common, this is not a case in which the automatic weapon (M-14) was made first by a given manufacturer and then modified to an N.M. As a matter of fact, only a few manufacturers made the NM and those only on order from the United States Army and one was T.R.W. A number of manufacturers made the M-14. The physical objective designs were different and if one followed one, at no point was the other resultant (along the way or otherwise). A number of characteristics desired in an infantry weapon, including automatic fire ability, were in the design and intent of the maker. A number of them were not in the design or desire of the manufacturer of the NM and that included the automatic feature - the single shot feature was desired and designed. The manufacturer of the NM put it this way:

"All N.M. rifles that were manufactured by us were designed by the United States Government and were manufactured and intended for use in a semi-automatic mode only."

In the course of the manufacture of the NM, five welding operations were required (both by the design instructions and by the inspection requirements). The purpose was to "permanently" permit only semi-automatic fire. The welding operations were to be performed on the selector shaft lock, the lock retaining pin, the selector shaft, the receiver, and the sear release. It is not seriously controverted that such five-point weldment rendered the rifle incapable of automatic fire, since the selector could no longer be assembled thereto.

We believe, in summary, that it is clear on this record that the NM was designed to shoot only in a semi-automatic fashion and that both the United States and the manufacturer intended that it would be permanently impossible for it to operate in an automatic manner and that such is the case.

C - Restoration

The Party in Interest argues that the "restoration" provisions are not involved in this case because one cannot "restore" something to a condition it never was in; that a finding, as above, that the NM, as manufactured, was not a machine gun, by intent or in fact, precludes a consideration of "restoration." The argument is linguistically sound as a general proposition. However, it is fairly obvious that it was the intent of Congress in amending the definition of a machine gun in 5845(b) in 1968 to include in the definition

of a machine gun any object that could be "readily" converted to an automatic weapon. See 5 Rep. No. 1501, 90th Cong. 2nd Sess. 45 (1968); 1968 U.S. Code C. & Ad. News at 4434.

It was the claim of the United States that the NM is "readily" (in the statutory language) convertible to a fully automatic weapon. To support that claim, the United States took an M-14 and did three of the weldments and thereafter established that it was a relatively simple task for someone knowledgeable with guns to remove the welds and, with the use of a paper clip, fire the gun automatically. The proof does establish that an M-14 with some modification is readily convertible.

The United States has in its possession thousands of NMs - there is not an iota of evidence in this record based on which one could describe what it takes to convert an existing NM. Nor is there any satisfactory explanation of why, in the mock-up, three weldments were used instead of the five in fact made on an NM. There is no question that the "conversion" would require that something be done with respect to five weldments and any fact finder, on the present record, would simply be guessing what that was and/or whether it could be done "readily."

Conclusions

1. The defendant NM was designed as and is a semi-automatic weapon.


2. The defendant NM was not designed to shoot automatically more than one shot, without manual reloading, by a single function of the trigger.

3. The same two conclusions apply to the frame or receiver of the defendant. (The frame or receiver is simply what might be called in ordinary parlance the section of the gun containing its chamber, trigger, firing mechanisms.)

4. This Court cannot determine on this record what it would take to convert the defendant or any other NM to a machine gun. There is no evidence on it. Since the United States claims the conversion is one readily made and has the burden, at least initially, on that issue, the Court must find to the contrary (there being no proof). Accordingly, it is found and concluded that the defendant cannot be readily restored or converted to a fully automatic weapon.

5. The defendant is neither a machine gun, as defined by 26 U.S.C. 5845(a), nor a firearm, as defined by 5845(a).

6. The possession of the defendant by Robert E. Sauerman on September 27, 1977 at Bob's Gun Shop near Dayton, Ohio, was not a violation of 26 U.S.C. 5812 and 5861(d) and the defendant is not subject to forfeiture under 26 U.S.C. 5872.


United States Senior District Judge