

1 21 4:33

[Signature]
CLERK OF COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,)	CRIMINAL CASE NO. 95-87
Plaintiff,)	
vs.)	OPINION
ANTONIO M. BORJA)	
Defendant.)	

Defendant Antonio M. Borja ("Defendant") appeared before the Court on October 17, 1995. Defendant was charged for knowingly or intentionally possessing a firearm and ammunition in violation of 6 CMC § 2222(e). Defendant moved for dismissal on the basis that the statute upon which the prosecution is based is unconstitutionally vague and ambiguous which violates his right to due process of law.

I. FACTS

On April 24, 1995, officers of the CNMI Department of Public Safety ("DPS") responded to a call of gunshots being fired at the residence of the Defendant in Kagman. The Defendant's spouse stated that the Defendant had ~~that~~ **fired** his gun because he had become angry with his son. The Defendant also admitted that he had fired his gun twice because he had been upset with his son. The Defendant surrendered his police-issued .38 caliber revolver, 8 rounds of .38 caliber ammunition and two expended shells of the same caliber ammunition.

FOR PUBLICATION

1 As of the date of this incident, the Defendant had been employed as a police officer for DPS.
2 During the above incident, the Defendant was at his home, was off duty and was not engaged as a law
3 enforcement officer in any official capacity.

4 II. ISSUE

5 Whether 6 CMC § 2222(e) states an act that is prohibited and whether the statute gives notice
6 to the citizens of the prohibited conduct.

7 III. ANALYSIS

8 The statute that the Defendant is accused of violating is 6 CMC § 2222(e). This section,
9 without the heading, reads as follows:

- 10 (e) Import, sell, transfer, give away, purchase, possess or use any handgun, automatic
11 weapon, or ammunition other than:
12 (i) All .22 caliber rimfire cartridges and .22 caliber rifles.
13 (ii) All .22 caliber centerfire cartridges and .223 caliber centerfire
14 rifles.
15 (iii) All .223 caliber centerfire cartridges and .223 caliber centerfire
16 rifles. These require a special weapons identification card.
17 (iv) All .410 gauge shotgun shells and .410 gauge shotguns.

18 The Defendant argues that the statute fails to indicate what conduct is prohibited, therefore, it violates
19 his right to due process under both the Commonwealth and U.S. Constitutions. In support, the
20 Defendant cites 6 CMC § 104(c) which provides that “[d]ivisions, parts, chapters, articles and section
21 of this Title, and the headings thereto, are made for the purpose of convenient reference and orderly
22 arrangement, and no implication, inference, or presumption of a legislative construction shall be
23 drawn from these classifications and headings.” The Defendant further cites Public Law 3-90 § 7(a)
24 which provides that the “[t]itle, division, part, chapter, article and section headings and tables of
25 contents do not in any manner affect the scope, meaning, or intent of the provisions of this Code.”
26 Thus, the Defendant contends that 6 CMC § 2222(e) does not prohibit any conduct.

27 The source of 6 CMC 2222 is 63 TTC § 573 which reads in pertinent part, “§ 573.
28 **Prohibitions.** No person shall: ...(5) Import, sell,...possess or use any handgun, automatic
29 weapon....” while section 2222 reads "Prohibited Acts...(e) Import, sell,...possess or use any
30 handgun, automatic weapon....” The difference is that "no person shall" after the heading is omitted

1 in the latter. In addition, the heading "prohibitions" in the T.T. Code was replaced with "prohibited
2 acts" in the CNMI Code, but the meanings of the two headings remain basically the same. Such
3 substitution is irrelevant because the "[t]itle, division, part, chapter, article and **section headings** and
4 tables of contents do not in any manner affect the scope, meaning, or intent of the provisions of this
5 Code." P.L. 3-90 § 7(a)(emphasis added).

6 However, Public Law 3-90 § 8 provides that the provision of the Commonwealth Code, as
7 far as they are substantially the same as existing law (Trust Territory Code), shall be construed as
8 continuations thereof and not as new enactments. Pursuant to this provision the legislature intended
9 that the phrase "no person shall" to be part of the statute after the heading of 6 CMC § 2222. Thus,
10 the critical question before this court is whether section 2222(e), without "no person shall" after the
11 section heading, states a prohibited act which gives notice to citizens of the proscribed conduct so as
12 to not violate their rights to due process of law.

13 Although a penal statute is not to be enlarged by interpretation, a statute because it is penal,
14 is not to be construed so as to fail to give full effect to its plain terms as made manifest by its text and
15 its **context**. Lamar v. *U.S.*, 36 S.Ct. 535 (1916). Furthermore, criminal statutes are to be construed
16 strictly, but they are also to be construed with common sense. *U.S. v. Alford*, 47 S.Ct. 597 (1927).

17 The Superior Court in Ruben v. Ogumoro held that a statute should not be interpreted so as
18 to render any of its terms superfluous. Ruben v. Ogumoro, slip op. no. 94-14 (Super. Ct. Feb. 8,
19 1994). While penal statutes are to be construed strictly against the state, they are not to be read
20 narrowly so as to deprive them of meaning. *Edwin* v. State of Alaska, 762 P.2d 499, (Alaska App.
21 1988).

22 In the case at hand, section 2222(e) of the Commonwealth Weapons Control Act is entitled
23 "Prohibited Acts." Reading section 2222(e) without its heading "Prohibited Acts" would render the
24 entire provisions of section 2222 meaningless. In interpreting statutes, courts will avoid interpretation
25 that leads to absurdity because absurdity could not have been contemplated by the legislature. City
26 of Phoenix v. Super. Court, *Maricopa City*, 696 P.2d 724, 729 (Ariz. App. 1985); Harris v. Capital
27 Growth Investors XIV, 805 P.2d 873 (Ca. 1991); In re S.O., 795 P.2d 254 (Colo. 1990); Richardson

1 v. State Tax Commission, 604 P.2d 719 (Id. 1979). The court does not agree with the Defendant that
2 the legislature intended section 2222(e) to exist without any purpose or substance.

3 The CNMI Supreme Court in Beregonia stated that a "person of ordinary intelligence" must
4 be given a "a reasonable opportunity to know what conduct is prohibited so that he or she may choose
5 between lawful and unlawful conduct." *Commonwealth v. Beregonia*, 3 N.M.I. 22 (1992).
6 Likewise, a statute must fail for vagueness if persons "of common intelligence must necessarily guess
7 at its meaning." *United States v. Smith*, 795 F.2d 841, 847 n.4 (9th Cir. 1986)(citations omitted).
8 One of the Rules of Construction for the Commonwealth Criminal Code provides that "words and
9 phrases as used in this Title shall be read within their context and shall be construed according to the
10 common and approved usage of the English language." 6 CMC § 104(b). It would be illogical to
11 think that a "person of ordinary intelligence" reading section 2222(e) would disregard the heading
12 because without it, the section does not mean anything. Reading section 2222(e) together with its
13 heading "Prohibited Acts" informs a person with "ordinary intelligence" what is proscribed. Thus,
14 the Defendant's argument that the statute does not state what conduct is prohibited is rejected.

15 IV. CONCLUSION

16 Section 2222(e) is neither vague nor ambiguous. It must be read in conjunction with the
17 heading "Prohibited Acts." The statute read together with its heading, states a prohibited conduct
18 which gives notice to a "person of ordinary intelligence" of what is lawful or unlawful. The
19 Defendant's right to due process is not violated. Therefore, the Defendant's motion to dismiss is
20 hereby DENIED.

21
22 So ORDERED this 1ST day of December, 1995.

23
24
25 
26 EDWARD MANIBUSAN, Associate Judge