

The Roanoke Times

May 21, 2023

How guns in Roanoke fall into the wrong hands

By Laurence Hammack

On May 22, 2020, Garland Lawton walked into a Roanoke gun store called Doomsday Tactical Supply, passed a background check, and purchased a Taurus 9 mm pistol.

What happened next happens all too often.

Lawton, who attested on federal paperwork that he was the actual buyer of the gun, had in fact purchased it for a convicted felon barred from possessing firearms.

Later that day, the 25-year-old went to Jermaine Drummond's house, turned over the small handgun, and was paid \$220 in cash for his trouble, according to court records. Drummond, who authorities say had a "voracious appetite" for illegal gun trafficking, then sold the weapon to an unknown buyer.

Eventually, the 9 mm pistol wound up in Prince George's County, Maryland, where a man used it to kill himself on Sept. 10, 2020.

People like Lawton — known as straw purchasers — are feeding an underground market that is one factor behind rising gun violence in Roanoke and beyond.

In U.S. District Court for Western Virginia, at least 20 people have been charged with making straw purchases of guns since January 2021, according to a review of court records.

Eleven of the defendants have been charged in the court's Roanoke division, which includes the Roanoke and New River valleys, over the same time period. Collectively, authorities say, they have put about 50 guns into the wrong hands.

"With straw purchases, we know the firearms are almost certainly going to be used in additional crimes," U.S. Attorney Chris Kavanaugh said.

Kavanaugh said there has been a "huge surge" in prosecutions in recent years. "Each one of these straw purchases is an opportunity for us to prevent a violent crime that was going to occur," he said.

From 2010 to 2020, federal authorities brought only one or two charges a year. The more recent uptick is not necessarily due to more illegal purchases of guns, Kavanaugh said, but rather a change in priorities by law enforcement.

“You can’t prosecute your way out of a problem, because a lot of times the crimes have already occurred,” he said. “But straw purchases are one of the few cases where you can move the needle, to use it [prosecution] as a deterrent for the crime happening in the first place, or to prevent that firearm from getting to someone else who is going to use it for a crime.”

Earlier this month, Lawton was sentenced to 42 months in federal prison.

“What do we all read about on a daily basis?” U.S. District Judge Elizabeth Dillon asked rhetorically from the bench, shortly before she imposed a term that exceeded what sentencing guidelines called for. “Shootings. Shootings. Shootings. Shootings.

“That has got to come to an end,” Dillon said. “So I take this crime very seriously.”

How guns reach the streets

When Doomsday Tactical Supply opened in 2015, it was a small shop that sold outdoor gear, survival food and other items that might appeal to preppers, or those who want to be prepared for whatever kind of disaster might strike.

Now, as a sign proclaims on its Orange Avenue Northeast building, “Guns sold here!”

When he went to the store in 2020, Lawton fulfilled the paperwork requirements to purchase a gun from a federally licensed dealer. On a Virginia State Police form, he indicated that he had not been convicted of any felonies or other charges that would prohibit him from having a gun.

That much was true.

On a second transaction record required by the U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives, Lawton listed himself as the actual buyer of the firearm. That was not true, as he knew a convicted felon had arranged for the purchase and was waiting for the gun, a federal indictment later charged.

Lawton and 10 other people charged in Roanoke’s federal court with making straw purchases went to a total of six gun stores in the region and purchased about 50 firearms, according to court records. Nearly half of the guns came from Doomsday Tactical.

No charges were placed against the gun store, as the legal burden rests on buyers to be honest about their intentions. The owner of Doomsday Tactical did not respond to calls last week from The Roanoke Times.

Many gun dealers are conscious of the law and report any suspicious activity to authorities, Kavanaugh said.

However, “there are some that don’t, and turn a blind eye to it,” he said. “This is their livelihood and it’s a sale they want to make.” The prosecutor declined to comment when asked about Doomsday.

While rare, there have been charges against gun dealers brought by federal authorities in Western Virginia.

A federal grand jury last year charged the owner of a gun store in Kentucky with delivering guns he had purchased from a distributor to an unlicensed dealer in Virginia, who then sold them at a flea market in Wise County.

Other recent cases involving straw purchases include a sale at a Front Royal gun store, in which a man admitted to making a false statement when he bought a 9 mm pistol. Four days later, the gun was used by someone else in a shooting in Washington, D.C. that killed one person and injured three others, according to court records.

In Roanoke, Jermaine Drummond was sentenced late last year to seven years in prison for arranging straw purchases that were made for him by Lawton and two other people.

Drummond attended Norfolk State University on a music scholarship and later found a manufacturing job that paid \$25 an hour. “But this did not satisfy Mr. Drummond,” who soon began supplementing his income by trafficking guns, Assistant U.S. Attorney Kristin Johnson wrote in court documents.

There was no direct evidence to whom Drummond sold guns. But many of the weapons were later connected to criminal activity in Brooklyn, New York, Washington, D.C. and six jurisdictions in Maryland.

“The impact of Mr. Drummond’s conduct on multiple communities in multiple jurisdictions cannot be overstated,” Johnson wrote.

How to reduce the flow

What’s happening in Roanoke is a problem nationwide.

Surveys of a random sample of 1,600 federally licensed gun dealers in 43 states, conducted in 2013 and 2017, showed that 67% of them had a customer in the past year that attempted a straw purchase.

The research conducted by Garen Wintemute, an emergency medicine professor at the School of Medicine at the University of California in Sacramento estimated that there were more than 30,000 attempted straw purchases each year.

Actual numbers are likely much higher, said Allison Anderman, senior counsel and director of local policy at the Giffords Law Center to Prevent Gun Violence.

“That’s a lot of diverted firearms to prohibited people,” Anderman said of the survey findings. “And obviously, we have laws that prohibit certain categories of people for a reason, because they are at a heightened risk of committing violence with a firearm. So the fact that people are still able to get them through straw purchases is a real problem.”

Straw purchases are the most common channel identified in gun trafficking investigations, according to the law center. Other ways that guns illegally enter the market are through sales from dealers directly to prohibited purchasers, sales by people who don’t have a federal license, and theft.

Gun legislation passed by Congress last year includes tighter restrictions of straw purchases. The Bipartisan Safer Communities Act clarifies the law and allows for stiffer sentences when someone has a reasonable belief that the gun they buy could be used to commit a crime.

Kavanaugh said his office plans to take advantage of the new law. In the meantime, he has found other ways to crack down on gun violence, which usually falls to the province of state courts.

Gun violence prosecutions in federal court have increased by 157% over the past year, he said. In one case, a man was convicted of using a gun in a drug deal that left his potential buyer dead. The conviction came after a jury in Roanoke Circuit Court acquitted the drug dealer of murder after he said he shot in self-defense.

In another case, two men are awaiting sentencing in a wild shootout that killed a teenager outside the Eastern Avenue house where they were selling drugs.

Facing the consequences

Three months after he pleaded guilty to buying a gun for a convicted felon, Garland Lawton was in court May 10 to face the consequences of his first felony conviction.

Johnson, the federal prosecutor, asked for a sentence of at least 30 months — the maximum under voluntary sentencing guidelines — based in part on the young man’s “tendency towards violent and assaultive behavior his entire life.”

Although Lawton had more than 50 encounters with law enforcement between 2016 and 2023 — many of them stemming from allegations of domestic violence against his family members and girlfriend — there were few charges, and ever fewer misdemeanor convictions.

Fear prevented some victims from bringing charges, evidence showed, and even Lawton’s mother would not tell him where she lived.

“To be sure, Lawton has an extensive and well-documented mental health history,” Johnson wrote in court records. But he has consistently failed to take advantage of counseling and other forms of help for his bipolar disorder, attention deficit disorder, post-traumatic stress disorder and suicidal and homicidal ideations.

“It’s hard to think of a more violent and dangerous situation,” Johnson said in asking the judge to impose a stiff prison term.

Defense attorney Jimmy Turk argued that more time behind bars would not help his client, who began a “downward spiral” at the age of 11, when he found the body of his father in a bathtub following his suicide.

Like many of the people charged with making straw purchases, Lawton’s struggles with mental illness and poverty made him vulnerable to finding “an easy way to make a little bit of extra money,” Turk said.

“Can we honestly say that giving him this extra time is going to solve the problem?” the Radford attorney said in his arguments to Dillon. “I would say no, your honor.”

When asked if he had anything to say before the sentence was pronounced, Lawton became too emotional to speak and handed a page of written comments to Turk. Reading from the notes, Turk said the Lawton was sorry for fighting with his family and was willing to seek mental health treatment.

In explaining her sentence of 42 months in prison, Dillon cited the seriousness of the crime and the extent of Lawton’s prior record — while saying she was glad to hear that he wanted help.

“Sending me to prison is not going to fix anything,” Lawton interjected.

Dillon cut the defendant off, saying it was time for him to listen.

‘I don’t want to see you back here again,’ she said. “You need to listen to the people who are trying to help you. If you can’t find a way to do that, Mr. Lawton, I will see you back here again. And I hope that’s not the case.”

The Roanoke Times

April 23, 2023

Botetourt man facing prison for Jan. 6 riot

By Laurence Hammack

If prosecutors get their way, a Botetourt County man who pepper-sprayed police during the riots at the U.S. Capitol will receive the toughest punishment delivered so far in the wide-reaching case.

An assistant U.S. attorney in Washington, D.C., is asking a judge to impose a prison term of 15 years and eight months for Markus Maly.

Maly, 49, is scheduled to be sentenced Friday.

Of the approximately 450 defendants sentenced to date — out of more than 1,000 people from across the country charged with participating in the insurrection — the longest sentence has been 10 years, according to Patty Hartman, a spokeswoman for the U.S. Attorney's Office.

In court documents filed last week, the government wrote that “a 188-month sentence reflects the severe gravity of Maly's conduct, his complete lack of acceptance of responsibility, his fraudulent attempts to profit off his notoriety, his obstruction of justice at trial, and a significant criminal history spanning his entire adult life.”

Maly's attorney, assistant federal public defender Benjamin Schiffelbein of Roanoke, countered that U.S. District Judge Amit Mehta should consider his client's “humanity” in setting a three-year sentence.

Early on the morning of Jan. 6, 2021, Maly caught a bus to the nation's capital, where he joined thousands who gathered at a rally to hear a speech by then-President Donald Trump. Falsely claiming that the 2020 election was stolen from him, Trump urged his supporters to march to the nearby Capitol and “fight like hell.”

Maly wound up at the building's Lower West Terrace, where a line of police officers was trying to fend off the surging mob. Amid the chaos, Maly picked up a canister of pepper spray and directed a stream of the toxic irritant into the face of a Metropolitan Police Department officer, a jury was told last December.

Evidence included surveillance video of Maly, wearing a white cowboy hat with an American flag on the brim, and comments he made on social media.

"This is what happens when you steal elections," he said in a selfie video taken from scaffolding he had climbed for a better view of the unruly crowd. "You get a p----- off f----- America. And America knows how to fight back."

Following a weeklong trial, the jury convicted Maly of eight felonies.

'January 6th P.O.W.'

When the former flooring installer with a checkered past returns to court this Friday, the government will likely argue that Maly should get 188 months in prison not just for what he did on Jan. 6.

That alone was “a criminal offense unparalleled in American history,” Assistant U.S. Attorney Stephen Rancourt wrote in a sentencing memorandum.

The 29-page document also recounts Maly’s long criminal history before the uprising — and what he did afterward.

From behind bars, Maly gave a statement to The Gateway Pundit, a far-right online publication, in which he called himself a “January 6th P.O.W.” who was unfairly convicted.

“The jury was going to find my codefendants and myself guilty regardless of the facts that were presented to them in trial,” he was quoted as saying in an article headlined: “Jan. 6 Dad Speaks for First Time Since Jury Slaughter in DC Kangaroo Court.”

“There was never one victim named or identified in the case the DOJ brought against Maly, the kind of blue-collar man from middle America that the establishment so despises,” the article stated.

In his sentencing memorandum, Rancourt named Christopher Boyle as the police officer who was pepper-sprayed by Maly, quoting his testimony at trial. Prosecutors have also argued that the entire country was victimized by the rioters’ attempt to hijack democracy.

The Gateway Pundit article included a link to a fundraising website that sought contributions for Maly’s wife and an extended family who share a home in rural Botetourt County.

“I’m asking for help for my family,” Maly wrote in a message addressed to “my fellow Americans & Patriots.” Donations had totaled \$16,011 through April 17, according to court records.

Prosecutors are now asking that Maly be fined \$16,011, in addition to serving prison time and paying another \$2,000 as his part in making restitution for the damage the mob caused to the Capitol.

“He should not be able to use his own notoriety gained in the commission of his crimes to ‘capitalize’ on his participation in the Capitol breach in this way,” Rancourt wrote.

'A lifelong criminal'

If Maly were to receive the longest prison sentence to date in the Jan. 6 prosecutions, it would likely be a short-lived record.

Members of two far-right extremist groups, the Proud Boys and the Oath Keepers, are accused of plotting to forcefully oppose the peaceful transfer of presidential power with a mob that swarmed the Capitol as Congress met to certify an election won by President Joe Biden.

They face more serious charges than Maly, including seditious conspiracy, obstruction of Congress, and destruction of evidence. Each one of those charges carries a sentence of up to 20 years.

Maly was convicted of interfering with and assaulting police, entering a restricted building and disorderly conduct. Sentencing guidelines call for a range of 155 to 188 months in prison.

In seeking the maximum, prosecutors call Maly "a lifelong criminal, with a felonious history dating back three decades." His 33 past convictions include two counts of assault on a police officer, burglary, possession of drugs, aggravated battery and traffic offenses.

Yet Maly's acts of violence in the Capitol riots -- which his attorney describes as lasting "less than a second and are barely visible" in surveillance footage -- fall short of what others are accused of.

The government is seeking a 24-year and six-month sentence for Peter Schwartz, a Pennsylvania man who was tried along with Maly and a third codefendant in last December's trial. Prosecutors describe Schwartz as "one of the most violent and aggressive participants" in the insurrection. His sentencing is set for May 5.

The longest sentence to date is a 10-year prison term imposed last September for Thomas Webster, a former New York police officer who used a flagpole to assault a police officer outside the Capitol.

Webster was sentenced by Mehta, who will also decide the fate of Maly and Schwartz.

Of the 453 defendants sentenced through the beginning of April, 237 have received prison terms. About 100 more were placed on home detention, and the remainder got probation, community service or other non-custodial forms of punishment, according to a tally by the U.S. Attorney's Office.

Seven of the approximately 1,020 people charged so far are from Western Virginia.

Thomas "T.J." Robertson, a former sergeant for the Rocky Mount Police Department who was off duty when he joined the riots, was convicted by a jury and is serving a sentence of seven years and three months. His co-defendant and fellow police officer, Jacob Fracker, was placed in probation after pleading guilty and agreeing to testify against Robertson.

Joshua Dillon Haynes of Covington, who previously served on that city's planning commission, pleaded guilty to charges that included destroying the cameras and other equipment of news media crews covering the insurrection. He was sentenced to two years and eight months.

Jamie Ferguson, a Henry County woman whose role in the riots was not violent, was sentenced to probation. Trials are pending for two other defendants, Jeremy Daniel Groseclose of Elliston and Casey Jane Tryon-Castro of Roanoke.

A patriotic response?

In his statement to The Gateway Pundit, Maly described himself as a loving husband and father, a hard worker, and a patriot. "I am spiritual and have a thirst for knowledge," he wrote.

Those traits — not a desire to be violent — are what took him to Washington, D.C., his attorney argues.

"Mr. Maly fervently believed that the 2020 election was being stolen. He fervently believed that he was protesting in the name of liberty and freedom," Schiffelbein wrote in a sentencing memorandum.

"His motives, however (factually) wrong they may have been, were based in values this country celebrates," the public defender wrote.

Maly was "called to Washington by our president," and believed he was acting in the traditions of America. "We celebrate those who have died in the name of liberty, and we ask nearly every child to pledge allegiance to this country," Schiffelbein wrote.

"What do we expect our citizens to do when the leader of the country (and someone often referred to as the leader of the free world) asks them to 'fight like hell' in support of his cause?"

Prosecutors say that Maly's testimony was perjury, listing nine assertions he made from the witness stand that were proven false by evidence the jury accepted. His lies amount to obstruction of justice, they say, in a case of "domestic terrorism, which the breach of the Capitol certainly was."

However, Maly should not be punished more harshly than many others involved in the riots simply for exercising his constitutional right to testify, Schiffelbein argues.

"The only meaningful distinction between Mr. Maly and others is that he was convicted after a trial at which he testified," his sentencing memorandum states. "But in the face of what led to the events of January 6, should those factors account for the bulk of his sentence?"

Currently being held in a Pennsylvania prison, Maly will soon return to Washington — this time to a federal courthouse within sight of where the riots happened — to learn the answer to that question.

The Roanoke Times

Nov. 18, 2023

Potential conflict of interest?

By Laurence Hammack

The possibility of Charlottesville attorney Jasmine Yoon becoming a federal judge raises a conflict of interest question: Her husband, U.S. Attorney Chris Kavanaugh, handles criminal cases in the court where she would preside.

Yoon, one of two attorneys recommended for the job this week by U.S. Sens. Mark Warner and Tim Kaine, was asked about the issue recently during the Virginia State Bar's evaluation of judicial candidates.

A report from the bar indicates that Yoon told the evaluation committee that Kavanaugh would be willing to step down, should she be appointed a federal judge for the Western District of Virginia.

That statement "assuaged the committee's fears of a potential conflict of interest," the report states.

Kavanaugh declined to comment Friday. Yoon could not be reached.

Federal law requires a U.S. judge or magistrate to disqualify himself or herself "in any proceeding in which his impartiality might reasonably be questioned."

That standard "sets a pretty low bar" and clearly applies to a judge who is married to a chief prosecutor, said Carl Tobias, a law professor at the University of Richmond. Even though Kavanaugh does not appear in court for many cases, his name is on all of his office's court filings and assistant prosecutors work at his behest.

In some cases, it's possible to find ways to resolve a judge's conflict of interest. For example, Tobias said, a judge for the 4th U.S. Circuit Court of Appeals recused herself from considering any case heard by her husband, a lower court judge in the circuit.

And when Thomas Cullen was appointed to the Western District's bench in 2020, he went straight from working as U.S. attorney to serving as a judge. Cullen heard no criminal cases for a year in order to avoid any actual or apparent conflict of interest. After a year, the judge said, he would consider other recusals in cases that were still working their way through the system from his tenure as top prosecutor.

However, the potential conflict posed by a Yoon judgeship would be more far-reaching – at least as long as Kavanaugh remained in office.

"I think that takes the issue off the table," Tobias said Friday, when told that Kavanaugh is willing to step down if his wife became a judge.

While Kavanaugh is serving a four-year term as U.S. attorney, district court judges are appointed for life. Kavanaugh was nominated by President Joe Biden and confirmed by the Senate, which means that his reappointment could ride on what happens in next November's election.

“This is the best way to handle it,” Tobias said of one spouse giving up a temporary job to allow the other to secure a higher and longer-lasting position.

Before his appointment in 2021, Kavanaugh was an assistant U.S. attorney in Charlottesville and also worked in the nation’s capital as senior counsel to the U.S. deputy attorney general. He currently serves on an advisory committee to Attorney General Merrick Garland.

“He would be a very marketable person,” Tobias said.

Yoon, a vice president for Capital One Financial Corporation, was one of two names recommended by Democrats Warner and Kaine to Biden, who must now decide who to nominate. The Senate will then make an appointment, likely sometime next year.

A spokeswoman for Warner, the state’s senior senator, did not respond to an emailed question Friday about the conflict of interest question raised by Yoon’s candidacy.

The other recommended name is Patice Holland, a Roanoke attorney who specializes in a variety of civil cases for the city’s largest law firm.

In its report to the senators, the state bar had high words for Holland and Yoon.

“The committee’s background investigators found that Yoon has the intelligence and temperament for the job and is humble in the face of her tremendous achievements,” the report stated.

Before taking a job as Capital One’s vice president for corporate integrity, ethics and investigation, Yoon served as associate and interim counsel for the University of Virginia, her alma mater.

She has also worked as an assistant U.S. attorney for the Eastern District, where she prosecuted more than 80 financial and public corruption cases.

“One committee member noted that Yoon had a steeliness under her quiet persona, while another member applauded her creativity and preparedness as an attorney,” the report stated.

Of Holland, the judicial evaluation committee said she “is one of the best litigators in Roanoke, and she is known for her ability to keep cool under pressure.”

As a principal attorney for Woods Rogers Vandeventer Black, Holland specializes in employment litigation defense, transportation law, and general civil and commercial cases.

“Holland has exhibited the qualities that embody a good judge; she can listen to litigants, has a good moral compass, and conducts herself in a way that would reflect well on the bench.”

Holland was found to be highly qualified, based on evenly divided vote by the 10-member committee. Yoon received the same ranking, but by a unanimous vote.

As women of color – Holland is Black; Yoon is Asian American – both candidates provide an opportunity for the Biden administration to bring diversity to Western Virginia’s federal bench, which over the years has been largely comprised of white men.