

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

vs.

BRANDON HAYES,

Defendant.

No. CR14-4082-MWB

**ORDER REGARDING
DEFENDANT’S MOTION TO
DISMISS**

I. INTRODUCTION AND BACKGROUND

Defendant Brandon Lee Hayes is charged with being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), and 924(e)(1) (Count 1), possessing a firearm with an obliterated serial number, in violation of 18 U.S.C. §§ 922(k) and 924(a)(2) (Count 2), and possessing a firearm after having been convicted of a misdemeanor crime of domestic violence, in violation of 18 U.S.C. §§ 922(g)(9), and 924(a)(2) (Count 3). A Mossberg Model 500AB, 12 gauge shotgun is the firearm Hayes allegedly possessed.¹ This case is before me on Hayes’s Motion to Dismiss (docket no. 93). Hayes argues that it is impossible for him to have possessed a firearm, as charged in the indictment, because “shotguns are not considered firearms under Chapter 921.” Motion to Dismiss at ¶ 5. The prosecution has filed a timely resistance to Hayes’s motion.

¹A shotgun is “a smoothbore shoulder weapon for firing shot at short ranges.” MERRIAN WEBSTER’S COLLEGIATE DICTIONARY 1085 (10th ed. 1993).

II. LEGAL ANALYSIS

Hayes initially points to the definition of “destructive device” under 18 U.S.C. § 921(a)(4)(B), which excludes certain shotguns.² Section 921(a)(3) of Title 18, however, defines “firearm” as “any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive . . . or any destructive device.” 18 U.S.C. § 921(a)(3). Although the definition of “destructive device” which follows at § 921(a)(4)(B) may exclude certain shotguns, there is no parallel exclusion for such shotguns in the definition of “firearm” in § 921(a)(3). Indeed, “shotguns” have been held to meet the statutory definition of “firearm,” whether operable or not. *See United States v. Adams*, 137 F.3d 1298, 1299 (7th Cir. 1998) (holding that shotgun met the definition of a firearm under § 921(a)(3) and the prosecution “need not show that a firearm is operable”); *United States v. Perez*, 897 F.2d 751, 754 (5th Cir. 1990) (holding that an inoperable shotgun “is nonetheless a firearm.”); *United States v. Mitchell*, 557 F.2d 1290, 1291–92 (9th Cir. 1977) (“The fact that Congress distinguished rifles and shotguns from other firearms for purposes of other restrictions elsewhere in the Act, e.g. 18 U.S.C. § 922(b)(1), demonstrates that under 18 U.S.C. § 922(h) Congress, by using the comprehensive term ‘firearm’ without qualification, did not intend to remove rifles and shotguns from the reach of this provision.”).

² In his motion, Hayes cites 18 U.S.C. § 921(b), but that section concerns Armed Forces members on active duty. Hayes likely meant to cite 18 U.S.C. § 921(a)(4)(B) based on his argument. That section defines “destructive device” to include:

any type of weapon (other than a shotgun or a shotgun shell which the Attorney General finds is generally recognized as particularly suitable for sporting purposes) by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter. . . .

18 U.S.C. § 921(a)(4)(B).

Hayes also relies on 26 U.S.C. § 5845 of the National Firearms Act. That reliance is entirely misplaced. The National Firearms Act, 26 U.S.C. § 5801, *et seq.*, requires the registration of “firearms” by manufacturers, importers, and makers thereof. 26 U.S.C. § 5841. Under 26 U.S.C. § 5861(d), it is unlawful for any person “to receive or possess a firearm which is not registered to him in the National Firearms Registration and Transfer Record.” The term “firearm” is defined in the National Firearms Act as

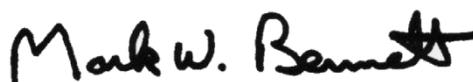
- (1) a *shotgun* having a barrel or barrels of less than 18 inches in length;
- (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length;
- (3) a rifle having a barrel or barrels of less than 16 inches in length;
- (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length;
- (5) any other weapon, as defined in subsection (e);
- (6) a machinegun;
- (7) any silencer (as defined in section 921 of title 18, United States Code); and
- (8) a destructive device. . . .

26 U.S.C. § 5845(a) (emphasis added). The Mossberg shotgun at issue here is not alleged to be one that requires such registration and Hayes has not been charged with violating § 5861(d).

Accordingly, because the Mossberg shotgun here clearly qualifies as a firearm under § 921(a)(3), Hayes’s Motion to Dismiss is denied.

IT IS SO ORDERED.

DATED this 9th day of December, 2015.



MARK W. BENNETT
U.S. DISTRICT COURT JUDGE
NORTHERN DISTRICT OF IOWA