

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

UNITED STATES OF AMERICA)	
)	
)	
)	
v.)	CRIMINAL No. 00-70-P-H
)	
TONY LaGASSE,)	
)	
DEFENDANT)	

**MEMORANDUM DECISION AND ORDER
ON MOTION TO DISMISS**

In this case, the defendant pleaded guilty to the federal charge that he knowingly made a false statement to a licensed firearms dealer—specifically that he answered “No” to question 9(k) on ATF form 4473 (asking if he had ever been convicted of a misdemeanor crime of domestic violence) when he knew that his answer was false. He now seeks to dismiss the Indictment on the ground that the federal prosecutor is unable to demonstrate that he had previously been convicted of a misdemeanor crime of domestic violence. I **DENY** the motion to dismiss.

The unusual timing of this motion to dismiss, filed after a guilty plea last October, arises out of my later decisions in United States v. Weeks, Criminal No. 00-4-B-H (D. Me. Sept. 28, 2000), and United States v. Southers, Criminal No. 00-83-P-H (D. Me. Jan. 3, 2001). In those cases I held that Maine’s assault statute

does not always require physical force to support a conviction.¹ As a result, I concluded that Weeks was not a “prohibited person” within the meaning of United States Sentencing Guideline 2K2.1(a)(4)(B) (1998) and 18 U.S.C.A. § 921(a)(33)(A), 922(g)(9) (West 2000) (prohibited from possessing a firearm) and that the Indictment against Southers should be dismissed (he was charged with illegally possessing a firearm after having been convicted of a misdemeanor crime of domestic violence). In each instance, the question was whether an earlier state guilty plea to assault established that the defendant had in fact been convicted of a misdemeanor crime of domestic violence. In light of the breadth of Maine’s assault statute (either bodily injury or offensive physical contact will suffice), I ruled that a determination must be made in each case, following the “categorical” determination rules of Taylor v. United States, 495 U.S. 575, 600-02 (1990), and subsequent First Circuit decisions, whether the state guilty plea was in fact a plea to the use of physical force. I recognized in Southers, citing Harris v. United States, 964 F.2d 1234, 1236 (1st Cir. 1992), that part of this inquiry was whether the defendant believed at the time of the earlier plea that he was pleading to physical force. In Weeks or Southers, the record did not permit the conclusion that the defendant understood that to be the nature of his plea.

The posture of this case is different. By pleading guilty, this defendant has

¹ I am aware that Judge Singal has disagreed with my analysis, see United States v. Nason, Criminal No. 00-37-B-S (D. Me. Feb. 13, 2001). I understand that the issue may now be on its way to the First Circuit. See United States v. Nason, Criminal No. 00-37-B-S, Notice of Appeal (Mar. 13, 2001); United States v. Southers, Criminal No. 00-83-P-H, Notice of Appeal (Feb. 2, 2001).

agreed that it was a lie on the ATF form to say that he had not been convicted of a misdemeanor crime of domestic violence. See Tr. of Rule 11 Proceeding at 5-6 (Oct. 18, 2000). The admission that it was a lie is enough to establish his belief that he had pleaded to an assault crime of violence, which is to say, physical force. At the Rule 11 hearing, I was very clear that such was the nature of the charge to which he was pleading:

THE COURT: Mr. Lagasse, you're charged in a two-count indictment. You're entering a plea of guilty only as to count 2. So that's the one I'm going to discuss with you. Count 2 charges that on or about October 1, 1999 in connection with buying a Harrington and Richardson 12-gauge single shot shotgun, namely a firearm, at Webster's Trading in Auburn, Maine, a licensed firearms dealer, that you knowingly made a false statement likely to deceive them, specifically you answered no to question 9K on the ATF form. That question asks if you'd ever been convicted of a misdemeanor crime of domestic violence, and you answered no, knowing at the time that your answer was false and fictitious. Do you understand this charge?

THE DEFENDANT: Yes, sir.

Id. at 6 (emphasis added).

Moreover, the defendant admitted at the Rule 11 hearing that the Prosecution Version, with immaterial exceptions, was true. Id. at 11. One of the assertions in that document was that "The Defendant falsely answered 'No'" to the question "whether he had ever been convicted of a misdemeanor crime of domestic violence." Prosecution Version at 1 (Oct. 18, 2000) (Docket Item 10). The defendant has agreed that his answer on the form was a lie. Tr. of Rule 11 Proceeding at 5-6. That establishes that at the time he filled out the form he knew his earlier plea had been to a crime of violence.

Thus, this defendant's plea of guilty in this Court demonstrated his recognition that his earlier state plea had been to the physical force part of the assault statute. Compare United States v. Hesketh, Criminal No. 00-95-P-C (Feb. 23, 2001) (Carter, J.) (denying motion to withdraw guilty plea where defendant, in effect, stipulated in a Rule 11 proceeding that his conviction of assault under Maine law involved physical force). That is enough.

The motion to dismiss the Indictment is therefore **DENIED**.

So ORDERED.

DATED THIS 21ST DAY OF MARCH, 2001.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
CRIMINAL DOCKET FOR CASE #: 00-CR-70-ALL

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