



FORUM

Smoke Without a Fire: Gainer's Overextension of Pennsylvania Gun Law

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Commonwealth v. Gainer (2010) came before the Superior Court of Pennsylvania to determine how gun operability ought to factor into judgments for defendants accused of unlawfully possessing a firearm. Tervus Gainer was found guilty of owning a firearm without a license — despite testimony from a weapons expert that he would need access to a sophisticated power tool in order to make the gun capable of firing any projectiles. I posit that *Commonwealth v. Gainer* was incorrectly decided because the Superior Court overextended the definition of an “operable” firearm without adequate evidence from the state showing Gainer was actually capable of returning the gun to fireable condition.

It first fell to the Pennsylvania courts to elucidate the role of the word “operable” in *Commonwealth v. Layton* (1973). After being found guilty of owning a gun as a Person Not to Possess a firearm, Layton appealed his case on the grounds that the weapon was incapable of firing a shot, and that he had no means of restoring the gun to operable condition. On appeal, the Supreme Court of Pennsylvania ruled that if the object in question cannot fire a projectile, the possessor cannot be charged with owning a gun unlawfully. Further, because Layton had no demonstrable ability (neither the tools or the know-how) to actually fix the broken gun, the Court ruled that he couldn't be convicted of firearm possession at all; nothing differentiated the gun from a similarly-shaped, but innocuous, lump of metal. This precedent stood until 2010, when *Gainer* tightened the definition of “firearm” to include any gun that may be made operable by any means — even those requiring the use of heavy machinery.

Under Pennsylvania law, no one may carry a firearm without a license, and people labeled “Persons not to Possess” — usually for previous felonies — are not able to obtain a license at all. These restrictions are laid out in 18 Pa.C.S.A. § 6106. Note, though, that the statute contains no language about weapon operability. Because of this omission, whether or not a nonfunctional weapon can still be classified as such is a significant legal debate within the state. Another complication is that operability falls on a spectrum: how fixable is the gun, and what tools or knowledge would repair demand? Without any specific language in the statute, judges in Pennsylvania have been left to draw lines in the sand, leaving defendants at the mercy of seemingly arbitrary regulations on what really counts as a firearm.

How does this apply to *Gainer*? According to the precedent set by *Layton*, *Gainer*’s weapon should not qualify as a “firearm” at all because of its inability to fire a bullet. To be able to restore the gun, *Gainer* would have needed to sand down a large steel burr which prevented a cartridge from being inserted. When the Superior Court decided to move beyond the boundaries of existing precedent, they reasoned that *Gainer* could theoretically have modified the gun to return it to working condition. Yet *Gainer* had taken no steps to do so, and the weapon was unfireable upon the defendant’s arrest. The Commonwealth’s only proof that *Gainer* might have had access to tools that could restore the gun to working condition was the fact that the weapon’s serial number had been smoothly removed, which may have required some similar “grinding” tool. This is shaky, circumstantial evidence at best. After all, the gun was unregistered; it could easily have been a “ghost gun” bought through the illegal street trade, where it would have passed through many hands before reaching *Gainer*. Any of the previous owners might have removed the serial number, and the Commonwealth failed to provide compelling reasoning that it was *Gainer* who modified the weapon. It is even feasible that, for instance, a simple hand-held sanding tool was deployed to remove a serial number from a gun, but this machine would not be capable of grinding through the multiple centimeters of steel required to remove (even clumsily) the burr which incapacitated *Gainer*’s firearm.

This simple hypothetical scenario casts serious doubt on the claim that removal of the serial number demonstrates an ability to make the firing portion of the gun operable. The weapons expert testifying for the Commonwealth admitted that a novice gun owner (like *Gainer*, who had no license or demonstrated history of ever owning another firearm) probably wouldn’t understand the issue with the weapon in the first place: “I don’t know if, you know, a layman could look and say oh, that’s the burr caused from dry firing.” These objections to the Commonwealth’s argument demonstrate just how much the Superior Court stretched the definition of

“operability” and relied on assumption in making the *Gainer* decision. The Court moved too far beyond the standard of operability defined in *Layton*, effectively re-writing 18 Pa.C.S.A. § 6106 to contain detailed language about firearm function not discussed in the statute itself.

By contrast, New York’s *People v. Longshore* (1995) produced a much more reasonable outcome under similar circumstances. *Longshore* established that the state must prove the firearm in question is actually able to fire a projectile (as opposed to potentially operable in the future, given the use of power tools) in order to obtain a conviction. The evidence presented in *Gainer* proved the opposite but ended with a felony conviction; clearly, the Pennsylvania court’s definition of operability extends beyond rational interpretation of the word.

Regardless, *Gainer* is good law at the time of writing, so it is worth investigating some of the real-world implications of this highly theoretical debate over “operability.” *Gainer*’s strictness might have an unintuitive impact: it could put strain on Pennsylvania’s criminal justice system, overburdening public defenders and negatively impacting low-income citizens. A majority of attorneys seeking to defend clients on trial for gun crime are county-appointed public defenders. According to a report from the U.S. Department of Justice, 82% of all accused felons are represented by public defenders. In Pennsylvania, possession of a firearm by a Person not to Possess, possession of a firearm with the serial number removed, and possession of a firearm without a license are *all felonies*, meaning punishment can easily entail jail time. These statistics provide a small window into the fact that the disadvantaged, and their public attorneys, will bear the brunt of punishment for stricter gun laws. Obviously, more cases will go to trial if more difficult-(but not wholly impossible)-to-fix firearms are deemed “operable,” directly causing an increased workload for the Office of the Public Defender (OPD). This means each client will have less time devoted to his or her case, and it also requires more in-court time (i.e., less preparation time). It is not difficult to imagine what comes of further burdening the already-overworked OPD: reduced quality of defense, longer waiting times for those seeking free representation, and an ever-wider outcome gap between those defended by private versus public attorneys. *Gainer*’s potential impact on the least-resourced defendants in the legal system seems contrary to the imperative that no citizen should face prison time for lack of adequate representation.

By uprooting the precedent set in *Commonwealth v. Layton*, *Commonwealth v. Gainer* fails to uphold the rigorous standard of evidence to which we should hold our prosecutors accountable. Without being able to prove that *Gainer* had access to a metal-grinding tool (or, indeed, the ability to use such an implement should he

come into possession of one), the Commonwealth won a new gun operability precedent that continues to greatly disadvantage the defense in gun cases. Even viewed in “the light most favorable to the Commonwealth,” the evidence does not add up to conviction “beyond a reasonable doubt.” *Gainer* should be overturned, and the *Layton* precedent should be returned to its definitive role in Pennsylvania firearm law.