

Gun Ownership and Mental Illness: The Legal Connection

Elisa Reiter, Daniel Pollack and Jeffrey Siegel | September 16, 2024



According to Statista Research Department (July, 2024), “The share of American households owning at least one firearm has remained relatively steady since 1972, hovering between 37% and 47%. In 2023, about 42% of U.S. households had at least one gun in their possession.” The Pew Research Center reports that “(72%) say protection is a major reason they own a gun. Considerably smaller shares say that a major reason they own a gun is for hunting (32%), for sport shooting (30%), as part of a gun collection (15%) or for their job (7%).”

We read of school shootings by minor children, sometimes using a semi-automatic weapon. In lieu of the moral dilemmas posed by providing a minor with a semi-automatic weapon, the focus of this article is on a case of first impression heard earlier this year by the Fifth Circuit Court of Appeals: *In Re: The State of Texas For the Best Interest and Protection of J.M.P. Jr.* Thirty years ago, J.M.P. Jr. had been involuntarily committed to a mental health facility for a week to 10 days. His ability to purchase a hunting rifle as an adult, long past any mental health issues, was in question.

When J.M.P. Jr. was approximately 17 years old, his personality apparently changed. He had been a good athlete and student. Around the age of 17, he began failing classes and losing interest in outside activities. Out-patient counseling did not improve his outlook. On one occasion, he ran away from home, staying with a friend who lived about a mile away from his home for a few days. J.M.P. Jr. would not concede to his father's requests to submit to a mental health evaluation. Heeding professional advice, J.M.P. Sr. sought relief by having his son involuntarily committed for the purposes of a mental health evaluation. Using the preprinted form provided, J.M.P. Sr. indicated that his son was "mentally ill and that and that as a result of mental illness, either (1) was likely to cause serious harm to himself or others, or (2) would continue to suffer severe and abnormal mental, emotional, or physical distress and would continue to experience deterioration of his ability to function independently."

The form also included language requesting that J.M.P. Jr. be assessed by two physicians. At the time of his evaluation(s), two physicians concluded that J.M.P. Jr. was "angry, defiant, and depressed, and he was a

danger to himself but not to others.” Neither of the evaluating physicians concluded that J.M.P. Jr.’s condition would last more than 90 days. Eight days after the initial application, the trial judge entered an order for in-patient treatment, not to exceed 90 days. At the time of his application to remove the disability regarding his right to purchase firearms in 2022, J.M.P. Jr. submitted testimony that he had not been medicated during his hospitalization, nor did the examining physicians’ certificates reflect a recommendation that he be placed on prescription medication. J.M.P. Jr. was discharged from in-patient treatment in 1992. He graduated with his high school class, attended university, and worked for a real estate developer for nine years. He moved to a different company, moving up from chief operating officer to president and chief executive officer, ultimately becoming sole owner of the business.

A few facts about J.M.P. Jr. at the time he sought to purchase a rifle are relevant:

1. His mental health was stable.
2. He had been married for over 14 years, and had three children.
3. He was involved in his church and several charities.
4. He coached his children’s youth sports teams.
5. He was unaware that he was unable to purchase firearms until he attempted to purchase a hunting rifle, when he attempted to purchase a hunting rifle “in part to hunt wild hogs on his ranch, but he was denied.”
6. As a result of the denial of his attempted purchase of a hunting rifle, J.M.P. Jr. complied with state and federal requirements to turn over his firearms by turning the following items to his father, J.M.P. Sr.

J.M.P. Sr. had purchased these items for J.M.P. Jr. when J.M.P. Jr. was fifteen:

- a. Beretta twin-gauge semiautomatic shotgun.
- b. Twelve-gauge Remington 1100 shotgun.
- c. 243-caliber Ruger M-77 rifle.

Such gun purchases are not unusual in Texas, where Sept. 1, the annual opening day of dove season, is considered by many to be a state holiday.

J.M.P. Jr. sought relief from the prohibition against someone whose prior involuntary hospitalization for mental health issues from owning a firearm. Pursuant to Texas Health and Safety Code Ann.

Sections 571.001 and 574.088, J.M.P. Jr. filed a petition in Dallas County's mental illness court to restore his right to purchase and possess firearms. J.M.P. Jr. contended that he owned hunting dogs, was an active hunter, that hunting was part of his social camaraderie, and that he, like his father had done for him, wanted to teach his son how to shoot and how to hunt.

The State of Texas opposed J.M.P. Jr.'s petition. As a result, he appealed that denial, presenting two issues to the Court of Appeals:

1. (a) The trial court abused its discretion by denying his petition; and (b) the federal and state relief-from-disabilities statutes are unconstitutional as applied.
2. The trial court erred in refusing to enter findings of fact and conclusions of law.

What is required to remove a firearms disability, pursuant to THSC Section 574.088?

“(1) The circumstances that led to imposition of the firearms disability under 18 U.S.C. Section 922(g)(4);

(2) The person’s mental history;

(3) The person’s criminal history; and

(4) The person’s reputation.

(c) A court may not grant relief unless it makes and enters in the record the following affirmative findings:

(1) The person is no longer likely to act in a manner dangerous to public safety; and

(2) Removing the person’s disability to purchase a firearm is in the public interest.”

At trial, the probate court received testimony not only from J.M.P. Jr., but from a licensed professional counselor, and accepted two letters from friends of the applicant as to his solid reputation. In addition, the court heard testimony from J.M.P. Sr. and from two friends that there had been no mental health issues nor criminal history over the preceding 30 years for the applicant. The state offered no exhibits. Instead, the attorney representing the state of Texas requested the trial court to take judicial notice of the certificates of mental health exam filed in the applicant’s case 30 years ago. Those certificates were not offered as exhibits. In her denial of the relief requested, the trial court judge noted on the record: “I have done mental health for a long time, over 20 years, and I have never heard of someone being healed of a mental illness. Never.” The trial

court's order included reference to "petition should be denied as removal of the firearms disability is not in the public interest."

The Fifth Circuit reverses the trial court's order, holding that J.M.P. Jr. is entitled to relief, having proven all of the elements required by THSC Section 574.088. It further holds that the same statute does not prohibit J.M.P. Jr. from purchasing and owning a firearm, and also restores J.M.P. Jr.'s right to "ship, transport, possess or receive firearms and ammunition." J.M.P. Jr.'s 2022 Petition for Relief from Firearms disability was filed with the probate/mental illness court. At trial, while the trial court judge acts as a gatekeeper who measures the credibility and veracity of witnesses:

"A fact-finder cannot ignore undisputed testimony that is clear, positive, direct, otherwise credible, free from contradictions and inconsistencies, and could have been readily controverted, and a fact-finder is not free to believe testimony that is conclusively negated by undisputed facts."

Justices Partida-Kipness, Reichel, and Miskel, provide a thorough history of applicable laws imposing firearms' disability, including the Gun Control Act of 1968, as amended by the Brady Handgun Violence Prevention Act of 1993 and TMHC Section 574.088. While the trial court can take judicial notice of pleadings, it "may not take judicial notice of the truth of factual statements and allegations contained in the pleadings, affidavits, or other documents in the file, nor may it take the pleadings to be true, absent testimony, other proof, or admissions by the other party."

The licensed professional counselor who testified at trial in 2022 evaluated J.M.P. Jr., finding that "there were no indications of mental instability, nor were there any mental health concerns reported that

should prevent J.M.P. Jr. from owning a firearm.” He presented with no addictive behaviors, was on no prescription medication, and was described as “high functioning and accomplished.”

Rozel and Mulvey, in their article entitled “The Link Between Mental Illness and Firearm Violence: Implications for Social Policy and Clinical Practice” argue that:

“The notoriety given to mass shootings and the link made to mental illness have two effects. First, they promote stigma by conflating mental illness and violence—a bias that affects patients, providers, the public, and policy makers (Clement et al. 2015, Corrigan et al. 2005, Price & Khubchandani 2016). Second, they distract the public and policy makers from dealing with the issues of violence and mental illness, and gun violence in particular, in an empirically grounded, frank way.”

The case of J.M.P. Jr. sets an important precedent for future legal decisions regarding mental health and ownership of firearms. The Fifth Circuit’s opinion demonstrates that:

1. Mental health history alone may be insufficient to deny someone the right to own a firearm.
2. Courts must consider the applications of those seeking to lift the disability to own firearms in regard to the applicant’s current mental state and the applicant’s ability to safely operate firearms.
3. Individual applicants can and should present evidence that they are no longer at risk.
4. The state must meet its burden of proof in challenging someone’s right to gun ownership in regard to an applicant’s prior mental health history.

5. Each case mandates individual assessment, rather than imposition of blanket restrictions.

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