UNITED STATES V. THOMPSON /CENTER ARMS COMPANY

Supreme Court of the United States, 1992
504 U.S. 505

OPINION BY: SOUTER

JUSTICE SOUTER announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE and JUSTICE O'CONNOR join.

Section 5821 of the National Firearms Act (NFA or Act), see 26 U. S. C. § 5849, levies a tax of $ 200 per unit upon anyone “making" a "firearm" as that term is defined in the Act. Neither pistols nor rifles with barrels 16 inches long or longer are firearms within the NFA definition, but rifles with barrels less than 16 inches long, known as short-barreled rifles, are. § 5845(a)(3). This case presents the question whether a gun manufacturer "makes" a short-barreled rifle when it packages as a unit a pistol together with a kit containing a shoulder stock and a 21-inch barrel, permitting the pistol's conversion into an unregulated long-barreled rifle, or, if the pistol's barrel is left on the gun, a short-barreled rifle that is regulated. We hold that the statutory language may not be construed to require payment of the tax under these facts.

I.

The word "firearm" is used as a term of art in the NFA. It means, among other things, "a rifle having a barrel or barrels of less than 16 inches in length . . . ." § 5845(a)(3). "The term 'rifle' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger, and shall include any such weapon which may be readily restored to fire a fixed cartridge." § 5845(c).

The consequence of being the maker of a firearm are serious. Section 5821(a) imposes a tax of $ 200 "for each firearm made," which "shall be paid by the person making the firearm," § 5821(b). Before one may make a firearm, one must obtain the approval of the Secretary of the Treasury, § 5822, and § 5841 requires that the "manufacturer, importer, and maker . . . register each firearm he manufactures, imports, or makes" in a central registry maintained by the Secretary of the Treasury. A maker who fails to comply with the NFA's provisions is subject to criminal penalties of up to 10 years' imprisonment and a fine of up to $ 10,000, or both, which may be imposed without proof of willfulness or knowledge. § 5871.

Respondent Thompson/Center Arms Company manufactures a single-shot pistol called the "Contender," designed so that its handle and barrel can be removed from its "receiver," the metal frame housing the trigger, hammer, and firing mechanism. For a short time in 1985, Thompson/Center also manufactured a carbine-conversion kit consisting of a 21-inch barrel, a rifle stock, and a wooden fore-end. If one joins the receiver with the conversion kit's rifle stock, the 21-inch barrel, and the rifle fore-end, the product is a carbine rifle with a 21-inch barrel. If, however,

the shorter, pistol length barrel is not removed from the receiver when the rifle stock is added, one is left with a 10-inch or "short-barreled" carbine rifle. The entire conversion, from pistol to long-barreled rifle takes only a few minutes; conversion to a short-barreled rifle takes even less time.

In 1985, the Bureau of Alcohol, Tobacco and Firearms advised Thompson/Center that when its conversion kit was possessed or distributed together with the Contender pistol, the unit constituted a firearm subject to the NFA. Thompson/Center responded by paying the $ 200 tax for a single such firearm, and submitting an application for permission under 26 U. S. C. § 5822 "to make, use, and segregate as a single unit" a package consisting of a serially numbered pistol, together with an attachable shoulder stock and a 21-inch barrel. Thompson/Center then filed a refund claim. After more than six months had elapsed without action on it, the company brought this suit in the United States Claims Court under the Tucker Act, 28 U. S. C. § 1491, arguing that the unit registered was not a firearm within the meaning of the NFA because Thompson/Center had not assembled a short-barreled rifle from its components. The Claims Court entered summary judgment for the Government, concluding that the Contender pistol together with its conversion kit is a firearm within the meaning of the NFA.

The Court of Appeals for the Federal Circuit reversed, holding that a short-barreled rifle "actually must be assembled" in order to be "made" within the meaning of the NFA. The Court of Appeals expressly declined to follow the decision of the Court of Appeals for the Seventh Circuit in *United States v. Drasen,* 845 F.2d 731, cert. denied, 488 U.S. 909 (1988), which had held that an unassembled "complete parts kit" for a short-barreled rifle was in fact a short-barreled rifle for purposes of the NFA. We granted certiorari to resolve this conflict.

II

The NFA provides that "the term 'make', and the various derivatives of such word, shall include manufacturing (other than by one qualified to engage in such business under this chapter), putting together, altering, any combination of these, or otherwise producing a firearm." 26 U. S. C. § 5845(i). But the provision does not expressly address the question whether a short-barreled rifle can be "made" by the aggregation of finished parts that can readily be assembled into one. The Government contends that assembly is not necessary; Thompson/Center argues that it is.

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II.B.

Here ... we are not dealing with an aggregation of parts that can serve no useful purpose except the assembly of a firearm, or with an aggregation having no ostensible utility except to convert a gun into such a weapon. There is, to be sure, one resemblance to the latter example in the sale of the Contender with the converter kit, for packaging the two has no apparent object except to convert the pistol into something else at some point. But the resemblance ends with the fact that the unregulated Contender pistol can be converted not only into a short-barreled rifle, which is a regulated firearm, but also into a long-barreled rifle, which is not. The packaging of pistol and kit has an obvious utility for those who want both a pistol and a regular rifle, and the question is whether

the mere possibility of their use to assemble a regulated firearm is enough to place their combined packaging within the scope of "making" one.

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Neither the statute's language nor its structure provides any definitive guidance. [The Court proceeded to examine several other sections of the statute to attempt to read the language in "context" and determine whether Thomson/Center's activities constituted "making" a firearm. The Court could not find an answer in the text of the statute.]

* * * *

Thomson/Center also looks for the answer in the purpose and history of the NFA, arguing that the congressional purpose behind the NFA, of regulating weapons useful for criminal purposes, should caution against drawing the line in such a way as to apply the Act to the Contender pistol and carbine kit.

It is of course clear from the face of the Act that the NFA's object was to regulate certain weapons likely to be used for criminal purposes, just as the regulation of short-barreled rifles, for example, addresses a concealable weapon likely to be so used. But when Thompson/Center urges us to recognize that "the Contender pistol and carbine kit is not a criminal-type weapon," it does not really address the issue of where the line should be drawn in deciding what combinations of parts are "made" into short-barreled rifles. Its argument goes to the quite different issue whether the single-shot Contender should be treated as a firearm within the meaning of the Act even when assembled with a rifle stock.

Since Thompson/Center's observations on this extraneous issue shed no light on the limits of unassembled "making" under the Act, we will say no more about congressional purpose. Nor are we helped by the NFA's legislative history, in which we find nothing to support a conclusion one way or the other about the narrow issue presented here.

III.

After applying the ordinary rules of statutory construction, then, we are left with an ambiguous statute. The key to resolving the ambiguity lies in recognizing that although it is a tax statute that we construe now in a civil setting, the NFA has criminal applications that carry no additional requirement of willfulness. *Cf. Cheek v. United States*, 498 U.S. 192 (1991) ("Congress has . . . softened the impact of the common-law presumption [that ignorance of the law is no defense to criminal prosecution] by making specific intent to violate the law an element of certain federal criminal tax offenses"); 26 U. S. C. §§ 7201, 7203 (criminalizing willful evasion of taxes and willful failure to file a return). Making a firearm without approval may be subject to criminal sanction, as is possession of an unregistered firearm and failure to pay the tax on one, 26 U. S. C. §§ 5861, 5871. It is proper, therefore, to apply the rule of lenity and resolve the ambiguity in Thompson/Center's favor. See *Crandon v. United States,* 494 U.S. 152, 168 (1990) (applying lenity in interpreting a criminal statute invoked in a civil action); *Commissioner v. Acker,* 361 U.S. 87, 91 (1959).

Accordingly, we conclude that the Contender pistol and carbine kit when packaged together by Thompson/Center have not been "made" into a short-barreled rifle for purposes of the NFA.[10]

The judgment of the Court of Appeals is therefore

Affirmed.

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JUSTICE STEVENS, dissenting.

If this were a criminal case in which the defendant did not have adequate notice of the Government's interpretation of an ambiguous statute, then it would be entirely appropriate to apply the rule of lenity.[1] I am persuaded, however, that the Court has misapplied that rule to this quite different case.

I agree with JUSTICE WHITE and also with the plurality that respondent has made a firearm even though it has not assembled its constituent parts. I also agree with JUSTICE WHITE that that should be the end of the case, and therefore, I join his opinion. I add this comment, however, because I am persuaded that the Government should prevail even if the statute were ambiguous.

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[10] JUSTICE STEVENS contends that lenity should not be applied because this is a "'tax statute,'" rather than a "criminal statute." But this tax statute has criminal applications, and we know of no other basis for determining when the essential nature of a statute is "criminal." Surely, JUSTICE STEVENS cannot mean to suggest that in order for the rule of lenity to apply, the statute must be contained in the Criminal Code. See, *e. g., United States v. Universal C. I. T. Credit Corp.,* 344 U.S. 218, 221-222 (1952) (construing the criminal provisions of the Fair Labor Standards Act, 29 U. S. C. §§ 215, 216(a)). JUSTICE STEVENS further suggests that lenity is inappropriate because we construe the statute today "'in a civil setting,'" rather than a "criminal prosecution." The rule of lenity, however, is a rule of statutory construction whose purpose is to help give authoritative meaning to statutory language. It is not a rule of administration calling for courts to refrain in criminal cases from applying statutory language that would have been held to apply if challenged in civil litigation.

[1] *See, e. g., Crandon v. United States,* 494 U.S. 152, 168 (1990) ,("Finally, as we have already observed, we are construing a criminal statute and are therefore bound to consider application of the rule of lenity. To the extent that any ambiguity over the temporal scope of [*18 U. S. C.] § 209(a)* remains, it should be resolved in petitioners' favor unless and until Congress plainly states that we have misconstrued its intent"); *Commissioner v. Acker,* 361 U.S. 87, 91 (1959) ,("The law is settled that 'penal statutes are to be construed strictly,' . . . and that one 'is not to be subjected to a penalty unless the words of the statute plainly impose it'") (citations omitted).

The main function of the rule of lenity is to protect citizens from the unfair application of ambiguous punitive statutes. Obviously, citizens should not be subject to punishment without fair notice that their conduct is prohibited by law.[2] The risk that this respondent would be the victim of such unfairness, is, however, extremely remote. In 1985, the Government properly advised respondent of its reading of the statute and gave it ample opportunity to challenge that reading in litigation in which nothing more than tax liability of $ 200 was at stake. Moreover, a proper construction of the statute in this case would entirely remove the risk of criminal liability in the future.

The plurality, after acknowledging that this case involves "a tax statute" and its construction "in a civil setting," nevertheless proceeds to treat the case as though it were a criminal prosecution. In my view, the Court should approach this case like any other civil case testing the Government's interpretation of an important regulatory statute. This statute serves the critical objective of regulating the manufacture and distribution of concealable firearms -- dangerous weapons that are a leading cause of countless crimes that occur every day throughout the Nation. This is a field that has long been subject to pervasive governmental regulation because of the dangerous nature of the product and the public interest in having that danger controlled. he public interest in carrying out the purposes that motivated the enactment of this statute is, in my judgment and on this record, far more compelling than a mechanical application of the rule of lenity.

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[2] Ambiguity in a *criminal* statute is resolved in favor of the defendant because "'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed'" and because "of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, [and therefore] legislatures and not courts should define criminal activity." *United States v. Bass,* 404 U.S. 336, 348 (1971).