



United States v. Hayes Impact on Law Enforcement Hiring & Retention Standards



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When the United States Congress enacted the federal Gun Control Act of 1968, the Act prohibited convicted felons from possessing firearms. In 1996, Congress amended the Act such that it also prohibited persons who were convicted of a “misdemeanor crime of domestic violence” from possessing firearms.ⁱ On February 24, 2009, the United States Supreme Court decided the *United States v. Hayes*ⁱⁱ, in which the court was asked to decide the parameters of this 1996 amendment.

In *Hayes*, in 2004, police officers responded to Mr. Hayes home in response to a call reporting domestic violence. While at Hayes’ home, the police received consent to search the home for weapons and they discovered a rifle. They also learned that Hayes had recently possessed several other firearms. Based on the fact that, in 1994, Hayes was convicted of misdemeanor “battery” against his former wife, he was indicted for violating the federal Gun Control Act.ⁱⁱⁱ

Hayes entered a plea with the right to appeal. Ultimately, the case was appealed to the United States Supreme Court. The issue before the court was, simply put, *whether, under the Gun Control Act, the “misdemeanor crime of domestic violence” must be a specific “domestic violence crime” (i.e.: domestic violence battery) that has as an element of the specific crime that the victim be a person with a specific domestic relationship; or, stated the other way, whether the “misdemeanor crime of domestic violence” could simply be a generic violent misdemeanor (i.e.: battery) as long as the victim of the crime is a person of the qualifying domestic relationship (i.e.: spouse, former spouse...)?*

The court noted that, under *18 U.S.C. § 921(a)(33)(A)*, a “misdemeanor crime of domestic violence” has two requirements. First, the crime must have, “as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon.”^{iv} Second, this crime must be “committed by” a person who has a specified domestic relationship with the victim.^v The court further noted that the definition does not impose a

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requirement that the specified domestic relationship be included in the predicate offense as an element of the crime.

In upholding Hayes' conviction, the Supreme Court stated

Most sensibly read, then, § 921(a)(33)(A) defines “misdemeanor crime of domestic violence” as a misdemeanor offense that (1) ‘has, as an element, the use [of force],’ and (2) is committed by a person who has a specified domestic relationship with the victim. **To obtain a conviction in a § 922(g)(9) prosecution, the Government must prove beyond a reasonable doubt that the victim of the predicate offense was the defendant’s current or former spouse, or was related to the defendant in another specified way. But that relationship, while it must be established, need not be denominated an element of the predicate offense.**^{vi} [emphasis added]

Therefore, the crime that triggers the prohibition of firearms possession contained in § 922(g)(9), does not have to be a specific “domestic violence” crime. Rather, the crime can be a generic violent misdemeanor crime (involving the use or attempted use of physical force or the threatened use of a deadly weapon) as long as the victim of that crime was in a particular domestic relationship with the perpetrator.

Practical Implications of *Hayes*

- When conducting background investigations of law enforcement applicants, if an applicant has a misdemeanor conviction involving the use or attempted use of physical force or the threatened use of a deadly weapon, the investigator must determine if the victim of that crime was involved in a “domestic relationship” with the applicant. The domestic relationships that trigger the prohibition against firearms possession are “*current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian, or by a person similarly situated with a spouse, parent, or guardian of the victim.*”^{vii} If the victim is one noted, then the applicant is prohibited from possessing a firearm and not qualified for a sworn law enforcement position.
- Agencies that employ officers that have been previously convicted of a misdemeanor crime of violence, should determine the relationship between the officer and the victim. If the victim is of a qualifying relationship (see previous bullet), then the officer is prohibited from possessing a firearm.
- Lastly, of course, this case has applicability for officers that enforce the Gun Control Act in the course of criminal investigations.

ⁱ 18 U.S.C. § 922(g)(9)[makes it “unlawful for any person...who has been convicted in any court of a misdemeanor crime of domestic violence...[to] possess in or affecting commerce, any firearm or ammunition.”]

ⁱⁱ 555 U.S. ____ (2009)

ⁱⁱⁱ 18 U.S.C. § 922(g)(9) and 924(a)(2)

^{iv} *Hayes*, 555 U.S. ____ (2009)(quoting 18 U.S.C. § 921 (a)(33)(A)(ii))

^v *Id.*

^{vi} *Hayes*, 555 U.S. ____ (2009)

^{vii} 18 U.S.C. § 921(a)(33)(A)