

MICHIGAN SUPREME COURT



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KENT COUNTY STUDENTS TO WITNESS MICHIGAN SUPREME COURT ORAL ARGUMENT FOR ‘COURT COMMUNITY CONNECTIONS’

In *People v Minch*, convicted felon seeks to have firearms seized by police delivered to his mother; Muskegon prosecutor argues felon-in-possession law bars delivery

LANSING, MI, October 15, 2012 – A collection of firearms owned by a convicted felon, and his efforts to have police deliver the guns to his mother, are at issue in a case that the Michigan Supreme Court will hear on October 25 in Grand Rapids as part of the “Court Community Connections” program.

In *People v Minch*, officers from the Fruitport Township Police Department seized 87 firearms from the defendant’s home after the defendant’s girlfriend reported that he had threatened her with a gun, at one point holding it to her head and pulling the trigger. Although the defendant was using a starting pistol, his girlfriend believed it to be a real gun. Of the 87 firearms, only one was illegal to own – a short-barreled shotgun.

After pleading guilty and being sentenced for illegal possession of the shotgun, and for possessing a firearm during the commission of a felony, the defendant requested that the police turn over the non-contraband firearms to his mother. The prosecutor argued that the police could not deliver the firearms to the defendant’s mother, or any other person he designated, without violating Michigan’s felon-in-possession statute. That statute makes it illegal for a convicted felon to “possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state...” But the circuit court and the Michigan Court of Appeals both ruled that the guns had to be turned over to the defendant’s mother.

While the Supreme Court normally hears oral argument at the Michigan Hall of Justice in Lansing, “Court Community Connections” takes the Court to various locations throughout Michigan to hold oral argument. The program is aimed principally at high school students.

The Grand Rapids program will be held at the Gerald R. Ford Museum, with about 200 Kent County students watching as attorneys in *People v Minch* argue their cases to the Court’s seven justices. Afterwards, the students will meet with the attorneys for a debriefing.

Chief Justice Robert P. Young, Jr., explained that the Court started “Court Community Connections” in 2007 to foster a better understanding of how appellate courts work and affect peoples’ lives.

“Compared to the trials we see depicted in films and television, the appellate process is pretty short on glamour and drama,” Young said. “But appellate courts set legal precedents that affect not only one case, but many others, and often for years to come. Through this program, students come to appreciate the importance of this part of the legal process.”

Kent County Circuit Chief Judge Donald A. Johnston III and Judge Paul J. Sullivan, who invited the Supreme Court to Grand Rapids, praised the Kent Intermediate School District, the Ford Museum, and the Grand Rapids Bar Association for their involvement. “We’ve had great cooperation from everyone involved,” Johnston said. “We’re all looking forward to this program, which we think is a tremendous opportunity for our students.” Bar association members are helping students prepare for the oral arguments with background materials provided by the Court, the judges said.

The oral argument will begin at 12:30 p.m. Media are welcome; please note the Court’s [policy on film and electronic coverage](#) and contact the Office of Public Information for permission to film or photograph during the hearing.

Please note: The summary that follows is a brief account of the case and may not reflect the way some or all of the Court’s seven Justices view the case. The attorneys may also disagree about this case’s facts, issues, procedural history, or significance. Briefs are online at <http://www.courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Oral-Arguments/Pages/default.aspx>. For further details about this case, please contact the attorneys.

PEOPLE v MINCH (case no. 144631)

Court of Appeals case no. 301316

Prosecuting attorney: Charles F. Justian/(231) 724-6435

Attorney for defendant Kurtis Ray Minch: Kevin J. Wistrom/(231) 747-9663

Trial Court: Muskegon County Circuit Court

At issue: The defendant in this case was charged with illegal possession of a firearm and felony-firearm after a police search of his home turned up an illegal sawed-off shotgun. The search also revealed a large number of firearms that were legal, at the time of the search, for the defendant to own; the police retained all the firearms. After he pled guilty to the charges, the defendant requested that the police turn over the legal firearms to his mother. But the prosecution argues that allowing the police to deliver the guns to the defendant’s mother would be akin to allowing the defendant to distribute firearms – violating a state statute that makes it illegal for a convicted felon to possess or distribute firearms in Michigan. The defendant argues that, because he legally owned the firearms until his conviction, he is entitled to designate someone to receive them.

Background: Kurtis Ray Minch, the defendant in this case, terrified his girlfriend with a starter pistol, which she believed was a real gun; at one point, he held the starter pistol to her head and pulled the trigger. She reported the incident to the Fruitport Township Police Department; the police obtained a search warrant and raided defendant’s home. They discovered and seized a large collection of firearms; all but one – a sawed-off shotgun – were legal to possess. Minch was charged with illegal possession of the sawed-off shotgun and possessing a firearm during the commission of a felony. The prosecutor did not bring

forfeiture proceedings – a legal process for the state to take property that was obtained by or used in criminal activity – against the legally owned guns.

Minch pled guilty to the charges. After Minch was sentenced to prison (two years for felony-firearm and one day to five years for illegal possession), he asked for the non-contraband firearms to be turned over to his mother, who had power of attorney over his possessions. Over the prosecutor's opposition, the circuit court judge ordered the police to turn over the firearms to the defendant's mother.

The prosecutor appealed to the Michigan Court of Appeals, citing a Michigan statute, MCL 750.224f. This law, also known as the felon-in-possession statute, makes it illegal for anyone convicted of a "specified felony" to possess or distribute firearms in Michigan. Both Minch's convictions – the illegal possession and the felony-firearm – qualify as "specified" felonies. According to the prosecutor, the circuit court's order violates this law by forcing the police to act on behalf of the defendant – in other words, as his agents – in distributing the guns to another agent, the defendant's mother, who has the authority to sell, keep, or distribute the firearms. A convicted felon cannot possess, distribute, or deliver weapons, and neither can any of his agents, the prosecutor contended.

But in a published decision, the Michigan Court of Appeals disagreed. The three-judge panel noted that the statute makes it illegal for a convicted felon to "possess, use, transport, sell, purchase, carry, ship, receive, or distribute a firearm in this state ..." Under the statute, Minch could not have the guns returned to him, the panel reasoned, but he could designate someone else to receive them. The panel cited *Banks v Detroit Police Department*, 183 Mich App 175 (1990) and *People v Oklad*, unpublished opinion per curiam of the Court of Appeals, issued March 3, 2000 (docket number 206589).

In *Banks*, as in *Minch*, the police department had retained firearms and other items that were seized from the plaintiff during a raid; the plaintiff sought to have the property turned over to a third person. The police department opposed returning the guns, arguing that the plaintiff, a convicted felon, was prohibited by federal law from possessing or transporting firearms. The Court of Appeals in *Banks* acknowledged that, under the federal felon-in-possession statute, the plaintiff could not himself possess or transfer firearms. But without a forfeiture proceeding, withholding the guns amounted to depriving the plaintiff of his property without due process of law, the *Banks* court said. The panel therefore allowed the plaintiff to designate someone else to receive the firearms.

In *Oklad*, the Court of Appeals applied similar reasoning to a case involving Michigan's felon-in-possession statute. The panel held that, although MCL 750.224f barred the defendant from legally possessing the firearms himself, he was entitled to designate another person to receive them. Without forfeiture proceedings, the police lacked a valid reason to keep the firearms, the *Oklad* court said.

The prosecutor in *Minch* appeals to the Michigan Supreme Court. He argues in part that the Court of Appeals should not have relied on *Banks* because later federal decisions hold that a convicted felon cannot have firearms returned or have a third party hold them in trust. The prosecutor also maintains that the legal consequences are the same regardless of whether Minch himself has the guns or his mother does. For example, if she sells the firearms, Minch is violating the statute because he is using his mother as his agent, the prosecutor contends.

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