

Felons and Guns: Update on the Britt Line of Cases

Author : Jeff Welty

Categories : [Crimes and Elements](#), [Uncategorized](#)

Tagged as : [Britt](#), [firearms](#), [guns](#), [hardway](#), [right to bear arms](#), [second amendment](#), [whitaker](#)

Date : March 18, 2013

Remember *Britt v. State*, 363 N.C. 546 (2009), in which the state supreme court ruled that a man with a single, non-violent felony conviction from 1979 had a state constitutional right to possess a firearm, making the felon-in-possession law, [G.S. 14-415.1](#) unconstitutional as applied to him? I blogged about *Britt* [here](#), but several years have now passed, and *Britt* has given rise to an interesting line of cases. Here are short summaries of *Britt*'s progeny, followed by a couple of additional comments:

- *State v. Whitaker*, 201 N.C. App. 190 (2009) (defendant was charged under G.S. 14-415.1; his motion to dismiss under *Britt* was properly denied as he had three felony convictions, including one for taking indecent liberties with a minor and one that was just two years old, as well as numerous misdemeanor convictions; the court of appeals analyzed the *Britt* issue under a five-factor test; I blogged about *Whitaker* [here](#))
- *State v. Buddington*, 210 N.C. App. 252 (2011) (defendant was charged under G.S. 14-415.1; he filed a motion to dismiss under *Britt*, which the trial judge granted; the court of appeals reversed, finding that the defendant presented no evidence at the hearing on the motion and ruling that neither the unverified motion nor the statements of defense counsel constituted evidence that could support the trial court's findings of fact)
- *Baysden v. State*, ___ N.C. App. ___, 718 S.E.2d 699 (2011), *aff'd by equally divided court*, ___ N.C. ___, 736 S.E.2d (2013) (plaintiff had prior felony convictions for (1) sale of marijuana in 1977, and (2) possession of a sawed-off shotgun in 1972; he apparently found the "rusted up and inoperable" shotgun on the beach; he subsequently worked for the Department of Defense for over 25 years; the court of appeals concluded that he "is in essentially the same position as Mr. Britt," and deemed G.S. 14-415.1 unconstitutional as applied to him; the court stated that recent statutory changes to the Felony Firearms Act allowing certain individuals to regain their gun rights are "not particularly relevant to the required constitutional analysis")
- *Johnston v. State*, ___ N.C. App. ___, 735 S.E.2d 859 (2012) (plaintiff had prior felony convictions for (1) conspiracy to commit larceny and receiving stolen goods in 1978, and (2) arson, conspiracy to burn a building, and fraud in 1981; the court of appeals ruled that his Second Amendment claim must be evaluated under intermediate scrutiny and remanded to give the state the opportunity to meet that burden; as to the plaintiff's *Britt* claim, the court ruled that there was insufficient evidence before the trial court to determine the issue, particularly about the facts underlying the plaintiff's prior convictions)

Two additional points are worth noting:

1. **Statutory procedure for restoration of gun rights.** After *Britt*, the General Assembly enacted [G.S. 14-415.4](#), which provides a statutory procedure for certain individuals "convicted of a single nonviolent felony" to regain their gun rights at least 20 years after their other civil rights have been restored, i.e., after they have completed their sentences. As noted above, the court of appeals has ruled that the existence of this statutory procedure is not relevant to the constitutional issues at the heart of *Britt*.
2. **Dan Hardway.** Remarkably, most of the key cases in this area have been handled by a single lawyer. [Dan Hardway](#) represented Mr. Britt, Mr. Baysden, and Mr. Johnston, and has had an impressive record of success. (I've never met Mr. Hardway.) It's worth noting that in each case, the plaintiffs proactively sued the state, seeking to regain their gun rights, as opposed to waiting until they were charged with a violation of G.S. 14-415.1 and raising the constitutional issue as a defense. That strikes me as very sound strategy.