

**PRIORITY**

PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

-v-

GLEN WESLEY PIERCE,  
Defendant-Appellant.

No. 55919

Application for  
Leave to Appeal  
Interlocutory Order  
Motion for Immediate  
Consideration  
Motion for Stay

TO: Judges  
FROM: Jack Borst  
DATE: February 3, 1981; for submission February 10, 1981.

COMMISSIONERS REPORT

FACTS:

In September, 1980, Glen Wesley Pierce entered a gas station in Detroit and announced a hold-up. There were two attendants in the room, one of whom observed Pierce take a pistol from his belt. Apparently, police drove up outside, because Pierce put the gun back in his pocket and ran out of the door. Police chased and arrested Pierce, and retrieved the gun, which was inoperable and not loaded, according to defendant.

Pierce was charged with attempted armed robbery and felony firearm. Pierce was bound over on both charges in Recorder's Court. He moved to dismiss the felony-firearm count on the ground that the gun, not being operable, was not a dangerous weapon. Judge Henry Heading denied the motion by order dated January 9, 1981.

In this application, defendant Pierce seeks leave to appeal from that order, a stay of trial and immediate consideration. The people have filed an answer in opposition. The brief in support does not state an issue.

ISSUE:

MAY A FELONY-FIREARM CHARGE BE BASED UPON AN INOPERABLE  
AND UNLOADED PISTOL?

FINDING:

The application for leave to appeal should be denied for failure to persuade the Court of the need for immediate appellate review. Stay should be denied, and immediate consideration should be granted.

Defendant relies upon People v Hughes, 85 Mich App 674, (1978); and People v Stevens, 409 Mich 564 (1980). People v Hughes, supra, does not discuss the question and is not relevant. People v Stevens, supra, was concerned with "whether a totally inoperable

pistol can constitute a 'dangerous weapon' so as to support a conviction of felonious assault under MCL 750.82; MSA 28.277." It is also not relevant.

There are several cases on point. In People v Gibson, 94 Mich App 172, 176-177 (1979), the Court, per Judge Brennan, said as follows:

"Initially, it should be noted that the armed robbery statute does not require proof that a gun is operable. It is the victim's reasonable belief that the defendant is armed that is sufficient to sustain the conviction. Whether the gun was operable or not, therefore, would not affect this defendant's armed robbery conviction.

"The felony-firearm statute, MCL 750.227b; MSA 28.424(2) provides:

"'Sec. 227b. (1) A person who carries or has in his possession a firearm at the time he commits or attempts to commit a felony, except the violation of section 227 or section 227a, is guilty of a felony, and shall be imprisoned for 2 years. Upon a second conviction under this section, the person shall be imprisoned for 5 years. Upon a third or subsequent conviction under this section, the person shall be imprisoned for 10 years.'

"The definition of a firearm is contained in MCL 8.3t; MSA 2.212(20):

"'Sec. 3t. The word "firearm", except as otherwise specifically defined in the statutes, shall be construed to include any weapon from which a dangerous projectile may be propelled by using explosives, gas or air as a means of propulsion, except any smooth bore rifle or handgun designed and manufactured exclusively for propelling BB's not exceeding .177 calibre by means of spring, gas or air.'

"The primary and fundamental rule of statutory construction is to ascertain and give effect to the purpose and intention of the Legislature. Intent must be inferred from the language used, but it is not the meaning of the particular words in the abstract only or their strictly grammatical construction alone that governs. The words are to be applied to the subject matter and to the general scope of the provision, and they are to be considered in light of the general purpose sought to be accomplished or the evil sought to be remedied. White v Ann Arbor, 406 Mich 554, 562; 281 NW2d 283 (1979). See also People v Gilbert, 88 Mich App 764, 768; 279 NW2d 546 (1979).

"The Supreme Court has found that the legislative purpose behind the felony-firearm statute is to deter the use of firearms due to their inherent dangerousness. Wayne County Prosecutor, supra. Therefore, the felony-firearm statute requires a construction in harmony with that finding, MCL 8.3; MSA 2.212.

"It is our opinion that the prosecutor need not present proof of operability as an element of a prima facie case in a felony-firearm prosecution. A contrary requirement would be inconsistent with the legislative intent of discouraging the practice of carrying guns in circumstances where harms is apt to occur."

In People v Stephenson, 94 Mich App 300 (1979), it was held, "the term firearm as it is used in the felony-firearm statute includes any firearm, loaded or unloaded, operable or inoperable". Syllabus. See also, People v Boswell, 95 Mich App

405 (1980). People v Sanchez, 98 Mich App 562 (1978), concerns the concealed weapons statute, and is not relevant. Leave to appeal should be denied.

bjb