

## ROB WOUTAT | Does the Penalty Fit the Crime?

By Staff Reports

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At the University of Minnesota, a professor told the following story to his criminal law class:

Suitcase Jones, a derelict in New York City, had fashioned a highly agreeable way of life, but it was one that made him well known to the New York police. Each fall when the weather got nippy, he went to Grand Central Station and stole a suitcase with calculated carelessness to ensure he'd be arrested. Under the law, such a crime ensured him six months in jail where he'd have relatively comfy quarters during the winter and be guaranteed three warm meals a day. When the weather warmed in the spring, he'd be released to continue his other chosen life, a life on the streets.

This strategy was successful for years, but it was risky because of a part of the law Suitcase Jones didn't know: When the value of the contents of a stolen suitcase exceeded a certain amount, the penalty abruptly jumped to 10 years in prison. And of course it was inevitable that one day Suitcase Jones would steal just such a suitcase.

The question the law professor asked his class: Did Jones cause sufficient inconvenience to his victim to warrant 10 years in prison at public expense?

What reminded me of this story was the arrest of 37-year-old Bremerton resident Luke Groves for illegal possession of firearms. When he was 18, Groves broke into a Shelton-area school, was caught, spent nine days in jail, did several hundred hours of community service, and was on probation for two years. Since then, he apparently has been a good citizen and has caused no problems with his employer, the federal government.

Six years ago he married a woman who owned guns. When their home was burglarized in 2008, police investigating the burglary discovered his wife's guns and arrested Groves under RCW 9.41.045: "offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition."

Groves says Mason County authorities never informed him about the firearms prohibition for felons, and that although the Department of Corrections did, he believed that the prohibition expired at the end of his probation. Apparently he was wrong.

Here's his situation today: Groves could plead guilty, pay a court fine, and go home. Or he could go to trial and risk a prison sentence, possibly as much as 10 years.

At this point you might wonder why County Prosecutor Russ Hauge would allow a charge that could result in such a punishment for this offense. His reply is that the law requires it.

Fortunately for Groves, and for all of us, the law is a flexible instrument with discretion allowed at several points in the legal process — in the arrest, in the charge, in the adjudication, and in the sentencing. He's now in the adjudication phase.

Given the possible 10-year prison term, you may think him foolish to not plead guilty and pay court costs, and reckless for taking the gamble of a trial. His response, according to the news article, is that pleading guilty would compromise his belief, although it's not clear what that belief is.

RCW 9.41.040 says Groves had possession of a firearm if he "owns, has in his or her possession, or has in his or her control any firearm " So unless the firearms in the house were locked in a closet and his wife had sole access to the key, it seems that he did have possession of the firearms and that he did break the law applying to felons and firearms.

But there is still the question of the penalty, as there was in the case of Suitcase Jones. Unless you see such cases in black and white — which the law doesn't — it seems that in Grove's case, a 10-year sentence is grossly disproportionate to the offense, as it was for Jones.

The sad irony in this case is that under state law, at some point Groves could have petitioned to have his gun ownership right restored, and given his life since the end of his probation 17 years ago, it seems likely a petition would have been successful. But we all know what they say about ignorance of the law.

Still, 10 years would be grotesque. How about probation and community service — instructing felons in the applicable firearms laws in this state, a subject which Groves probably knows well by now.

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