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WEAPONS OF CHOICE

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30 months in jail for broken gun

Judge hands down penalty for misfire from 20-year-old rifle

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A federal judge has ordered a 30-month prison sentence for a man whose rifle misfired, letting loose three shots at a firing range, prompting 2nd Amendment supporters to warn their constituents how easily they, too, can become a "gun felon."

"It didn't matter the rifle in question had not been intentionally modified for select fire, or that it did not have an M16 bolt carrier or sear, that it did not show any signs of machining or drilling, or that that model had even been recalled a few years back," said [a commentary in Guns Magazine](#) on the case against David R. Olofson, of Berlin, Wis.

"It didn't matter the government had repeatedly failed to replicate automatic fire until they replaced the ammunition with a softer primer type. It didn't even matter that the prosecution admitted it was not important to prove the gun would do it again if the test were conducted today," the magazine said. "What mattered was the government's position that none of the above was relevant because '[T]here's no indication it makes any difference under the statute. If you pull the trigger once and it fires more than one round, no matter what the cause it's a machine gun.'

"No matter what the cause.

"Think about if your semiauto ever malfunctions. Because that's how close you could be to becoming a convicted 'gun felon,'" the commentary said.

[WND reported earlier](#) when Olofson, a drill instructor in the National Guard, was convicted in a

federal court for illegally transferring a machine gun.

The verdict came in [the U.S. District Court for the Eastern District of Wisconsin](#).

An expert witness told WND the conviction means anyone whose weapon malfunctions is subject to charges of having or handling a banned gun.

(Story continues below)



"If your semiautomatic rifle breaks or malfunctions you are now subject to prosecution. That is now a sad FACT," wrote Len Savage, a weaponry expert who runs Historic Arms LLC.

"To those in the sporting culture who have derided 'black guns' and so-called 'assault weapons'; Your double barreled shotgun is now next up to be seized and you could possibly be prosecuted if the ATF can get it to 'fire more than once,'" he wrote in [a blog run by Red's Trading Post](#).

"Hey, but don't worry," Savage said. "The people testing it have no procedures in writing and the testing will be in secret."

He said during an [interview with Jews for the Preservation of Firearms Ownership](#) that Olofson had been instructing a man in the use of guns, and the student asked to borrow a rifle for some shooting practice.

"Mr. Olofson was nice enough to accommodate him," Savage said. So the student, Robert Kiernicki, went to a range and fired about 120 rounds. "He went to put in another magazine

and the rifle shot three times, then jammed."

The Milwaukee Journal-Sentinel said Olofson, 36, is free until he gets a letter notifying of his date to report for confinement, and his lawyer, Brian Fahl, promised an immediate appeal with the help of the National Rifle Association.

He said the rifle, which was subject to a manufacturer's recall because of mechanical problems at one point, malfunctioned because of the way it was made.

But he also warned of the potential problems from broken guns.

"If you have a multiple firing, it looks like you can be prosecuted," he told the newspaper.

The judge, Charles Clevert, said he believed Olofson knew about the gun, or should have.

"This was a man who has considerable knowledge of weapons, considerable knowledge of machine guns," Clevert said, according to the Journal-Sentinel. "Mr. Olofson, in this court's view, has shown he was ignoring the law."

Prosecutors said Olofson loaned the Olympic Arms gun to Kiernicki, whose burst of three shots prompted federal investigators to confiscate the gun for testing.

Savage said once the government got the gun, things got worse.

"They examined and test fired the rifle; then declared it to be 'just a rifle,'" Savage said. "You would think it would all be resolved at this point, this was merely the beginning."

He said the Special Agent in Charge, Jody Keeku, asked for a re-test and specified that the tests use "soft primered commercial ammunition."

"FTB has no standardized testing procedures, in fact it has no written procedures at all for testing firearms," Savage said. "They had no standard to stick to, and gleefully tried again. The results this time... 'a machinegun.' ATF with a self-admitted 50 percent error rate pursued an indictment and Mr. Olofson was charged with 'Unlawful transfer of a machinegun.' Not possession, not even Robert Kiernicki was charged with possession (who actually possessed the rifle), though the ATF paid Mr. Kiernicki 'an undisclosed amount of money' to testify against Mr. Olofson at trial," Savage said.

And then during the trial, the prosecution told the judge it would not provide some information defense lawyers felt would clear their client, Savage continued. That included the fact that the rifle's manufacturer had been issued a recall notice for that very model in 1986 over an issue

of guns inadvertently slipping into full automatic mode, if certain parts were worn or if certain ammunition was used.

Olofson eventually was convicted of and now sentenced for transferring a machine gun.

WND also reported bloggers had a heyday when a federal agent apparently assigned to the same office that did the Olofson investigation left her gun inside the secured area at Milwaukee's airport.

The incident had gotten only nominal publicity, with mostly local reporters carrying the story. According to the Associated Press, the Bureau of Alcohol, Tobacco, Firearms and Explosives agent, who was not identified by authorities, left her gun in the restroom at the conclusion of a long trip.

The special agent alerted authorities at some time later, after she had left the airport, according to Guy Thomas, a spokesman. He said the abandoned gun was recovered either by local authorities or a civilian.

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