

Why the Charleston Loophole never happened

Hillary Clinton said the FBI needed “just one more day” to stop Dylann Roof from being able to purchase the handgun that he allegedly used to kill nine people at a church in Charleston, South Carolina, last year. That’s false. One more day wouldn’t have mattered. The FBI director has said that clerical errors led to Roof being able to legally purchase the gun in April 2015, and the FBI didn’t confirm that the sale shouldn’t have been allowed until after the shooting two months later. Clinton, a Democratic presidential candidate, made the claim at a campaign rally in Chicago on Feb. 17 (at 6:56 in this video). She said that the “powerful” gun lobby is blocking “common sense reforms” like closing the so-called “Charleston Loophole,” a reference to the Charleston shooting and the law allowing federally licensed dealers to sell firearms after a three-day waiting period for a background check.

Clinton, Feb. 17: All we want is common sense. We want comprehensive background checks that close the gun show loophole and online loophole. We want to close what is called the Charleston loophole. And let me explain to you what that is. There is a three-day business limit – the time you have to conduct a background check. At the end of three days the person wanting to buy the gun can come back and buy it. Whether or not the background check is complete. Whether or not the records from local and federal law enforcement have arrived on your computer. That’s what the killer in Charleston did. He went and applied to buy that gun. The end of three days he came back. He was sold the gun. Despite the fact that if there had been just one more day the record of his felony conviction would have gotten there. And he would not have been able to buy that gun. But he did.

Clinton is right that federal law allows licensed dealers to transfer a firearm after three business days even if the required background check has not been completed.

According to the FBI website: “If the NICS Section is unable to provide either a Proceed or Denied response to the Federal Firearms Licensee within three business days, the Brady Handgun Violence Prevention Act of 1993 does not prohibit the Federal Firearms Licensee, or FFL, from transferring the firearm; however, the FFL is not required to do so.” NICS refers to the National Instant Criminal Background Check System in West Virginia.

However, Clinton is wrong to say that the FBI would have denied Roof’s request if the store that sold him the handgun had to wait “just one more day.”

In a statement to reporters on July 10, 2015, FBI Director James Comey explained that “a mistake” in the background check process caused a delay that allowed Roof to purchase the gun after waiting the required three business days. Comey said the NICS examiner responsible for processing the request did not see an incident report indicating that Roof had previously admitted to possessing drugs, which Comey said would have led to a denial.

Comey, July 10, 2015: I want to describe the particulars of the Roof gun purchase and background check, because Roof should not have been allowed to purchase the handgun. Here is what happened, as I understand it today:

On April 11, Roof attempted to purchase a handgun from a store in West Columbia, South Carolina, a near suburb of Columbia. That day was a Saturday. On the next business day, April 13, an examiner in our West Virginia facility was assigned the case and began to process it.

Her initial check of Roof’s criminal history showed that he had been arrested in South Carolina March 1 on a felony drug charge. This charge alone is not enough to deny proceeding with the transaction.

60 days after the transaction Dylan Roof attacked the church. And the FBI was none the wiser.