

United States v. Jacobs

The Defendant was facing a mandatory minimum sentence of 20 years based on possession of one pound of cocaine, an assault rifle, and an illegally sawed-off shotgun. The jury found the defendant not guilty on three of the five charges, but convicted him of Possession of Cocaine with Intent to Deliver and of Use of an Assault Rifle while Drug Dealing. Mr. Erdahl made a Motion for Acquittal Notwithstanding the Jury's Verdict. His motion was granted with respect to Count II, and the Defendant was sentenced on Count I to serve five years. Mr. Erdahl then appealed the denial of Defendant's suppression motion. This appeal was argued before the Eighth Circuit Court of Appeal and, three days later, the Defendant was released from custody and all charges were resolved favorably to him. The District Court and Appeals Court rulings are set forth below.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA,)
Plaintiff,)
vs.)
RONALD FOSTER JACOBS,)
Defendant.)

CRIMINAL NO. 91-129

RULINGS

A five count indictment was returned against Ronald Foster Jacobs: Count 1 charged defendant with possession with intent to distribute cocaine; Count 2 charged defendant with using and carrying a firearm during and in relation to a drug trafficking offense; Count 3 charged defendant with using and carrying a short-barrelled shotgun during and in relation to a drug trafficking offense; Count 4 charged defendant with possession of an unregistered weapon; and Count 5 charged defendant with using the mail to facilitate the possession of cocaine with intent to distribute. The jury returned not guilty verdicts on Counts 3, 4, and 5; the jury returned guilty verdicts on Counts 1 and 2.

On March 24, 1992, a hearing was held on defendant's post-trial motions for judgment of acquittal and for new trial. The parties were granted to and including March 27, 1992, to present the court with additional authority in support of their positions; the motions are now ready for ruling. The court grants the motion for judgment of acquittal on Count 2 but denies the

motion for judgment of acquittal on Count 1 and the motion for new trial.

MOTION FOR JUDGMENT OF ACQUITTAL

The jury's verdict must be sustained if, viewing the evidence in the light most favorable to the government and giving the government the benefit of all reasonable inferences, a reasonable fact-finder could have found defendant guilty beyond a reasonable doubt. United States v. Marin-Cifuentes, 866 F.2d 988, 992 (8th Cir. 1989). Jacobs does not contest the jury's guilty verdict on Count 1 charging him with possession with intent to distribute cocaine. He challenges only the guilty verdict on Count 2, the count charging him with knowingly using and carrying a firearm during his commission of Count 1 in violation of 21 United States Code section 924(c).

The court's jury instructions on Count 1 placed the burden on the government to prove beyond a reasonable doubt that Jacobs knowingly used and carried a firearm while committing the crime of possession with intent to distribute cocaine. The marshalling instruction, the court's jury instruction Number 14, stated as an element of Count 2 the requirement that the government prove Jacobs had "used and carried" the firearm. Regardless whether the word "and" rather than the word "or" should have been used, the instruction as given became the law of the case when it was not objected to by the parties. Indeed, the jury's handwritten note to the court during deliberations pointed out the variance between the phrase "used and carried" in instructions 14 and 15 and

the use of the phrase "used or carried" in instruction Number 16. The instruction required the government to prove that Jacobs both used and carried the Chinese assault rifle.

The evidence at trial stopped far short of proving beyond a reasonable doubt that Jacobs used and carried any firearm while committing the crime charged in Count 1. The firearm referred to was the Chinese assault rifle that was located during a search of Jacobs's residence. It was located in an upstairs closet, encased and unloaded. The ammunition clip for the Chinese assault rifle was found on the first floor. This evidence does not present sufficient nexus between the unloaded Chinese assault rifle and the drugs and cash found on the first floor. The government plainly failed to prove that Jacobs carried the Chinese assault rifle in connection with his commission of the Count 1 offense.

The government now suggests that the "firearm" referred to in Count 2 could be the shotgun referred to in Count 3 as well as the Chinese assault rifle. But in its trial brief filed before trial commenced, the government specifically identified the assault rifle as the firearm referred to in Count 2 and identified the short-barrelled shotgun as the firearm referred to in the charge in Count 3, a separate section 924(c) charge. The jury acquitted defendant Jacobs on Count 3. Moreover, there is no evidence he carried the shotgun in connection with commission of the Count 1 offense.

Even if the court had instructed the jury that the government had only to prove the firearm was "used or carried,"

