

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States v. Carol Ann Green

889 F.2d 187 (8th Cir. 1989) · No. 89-5198 · Decided November 15, 1989

SUMMARY

Carol Ann Green appealed the two-level sentencing enhancement imposed under U.S. Sentencing Guidelines § 2D1.1(b)(1) for possessing a firearm during a drug-trafficking offense. The Eighth Circuit held that, because Green possessed an accessible firearm and ammunition in the apartment where she conducted cocaine-base transactions, it was not clearly improbable that the firearm was connected to the offense, and it affirmed the sentence.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Wollman, Circuit Judge; John R. Gibson, Circuit Judge; Ross, Senior Circuit Judge
JURISDICTION	Federal
DECIDED	November 15, 1989
DOCKET	89-5198
DISPOSITION	affirmed
PROCEDURAL POSTURE	Green pleaded guilty to one count of distributing cocaine base after three other counts were dismissed pursuant to a plea agreement. She appealed the district court's two-level upward sentencing adjustment under U.S.S.G. § 2D1.1(b)(1) for possession of a firearm during the commission of the drug offense.
STANDARD OF REVIEW	Under 18 U.S.C. § 3742(e), factual findings are accepted unless clearly erroneous, and the reviewing court gives due deference to the district court's application of the Sentencing Guidelines to the facts.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Carol Ann Green v. United States of America

TOPICS

- sentencing guidelines
- sentencing
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

criminal sentencing

federal sentencing guidelines

criminal procedure

federal appellate practice

QUESTIONS PRESENTED

1. Whether the district court clearly erred in finding that Green possessed a firearm during the commission of her drug-distribution offense.
2. Whether the two-level enhancement under U.S.S.G. § 2D1.1(b)(1) applied where the firearm was unloaded but readily accessible in the apartment from which Green conducted drug transactions.

HOLDINGS

1. The district court did not clearly err in finding that Green possessed a firearm during the commission of the offense. The firearm enhancement applied because the gun and ammunition were located in the same apartment where Green operated her drug-distribution business, and it was not clearly improbable that the firearm was connected with the offense.

KEY QUOTATIONS

“In sum, Green’s undenied possession of a firearm and ammunition in the same place where she conducted drug transactions and the additional hazard the presence of the firearm created in her drug operation satisfy us that connection of the gun to the offense is not clearly improbable.” (¶ 11)

FACTUAL BACKGROUND

Law enforcement conducted two controlled purchases of cocaine base from Green at her apartment. A search of the apartment recovered approximately 69.958 grams of cocaine base packaged in 62 small plastic bags, along with smaller quantities of cocaine and marijuana. Officers also found an unloaded .22-caliber handgun in plain view in Green’s bedroom and .22-caliber ammunition in a nearby dresser; Green admitted at sentencing that the firearm belonged to her.

PROCEDURAL HISTORY

Green was charged with four drug-related offenses and pleaded guilty to one count in exchange for dismissal of the other three counts and an agreement to cooperate. The district court set her base offense level at 32, increased it by two levels under U.S.S.G. § 2D1.1(b)(1), reduced it by two levels for acceptance of responsibility, and sentenced her to 121 months’ imprisonment. The Eighth Circuit reviewed the firearm-possession finding for clear error and affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Franco-Torres, 869 F.2d 797 (5th Cir. 1989)

- United States v. Otero, 868 F.2d 1412 (5th Cir. 1989)
- United States v. Weidner, 703 F. Supp. 1350 (N.D. Ind. 1988), aff'd, 885 F.2d 873 (7th Cir. 1989)
- United States v. Holland, 884 F.2d 354 (8th Cir. 1989)
- United States v. Wagner, 884 F.2d 1090 (8th Cir. 1989)
- United States v. Koonce, 884 F.2d 349 (8th Cir. 1989)
- United States v. Jones, 875 F.2d 674 (8th Cir. 1989), cert. denied, 110 S. Ct. 177 (1989)
- United States v. Restrepo, 884 F.2d 1294 (9th Cir. 1989)

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