

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

United States v. Jacques Yves Sebastien Duroseau

No. 21-4104, United States Court of Appeals for the Fourth Circuit (February 24, 2022)

SUMMARY

The Fourth Circuit vacated a conviction under 18 U.S.C. § 922(a)(5) for transporting firearms to an unlicensed person, holding that the statute requires a completed transfer of firearms to an unlicensed recipient and does not criminalize attempts. The court found that because the defendant’s firearms were seized by Haitian police before delivery, the government failed to prove a completed transfer, even though the defendant had transported the weapons to Haiti. The opinion clarifies that "transport" under § 922(a)(5) is a means of transfer but does not eliminate the element that the firearms must actually reach an unlicensed person. The court also addressed preservation of the issue, noting the district court had sua sponte considered and ruled on the completed-transfer requirement.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Traxler; Diaz; Quattlebaum
JURISDICTION	Federal
DECIDED	February 24, 2022
DOCKET	21-4104
DISPOSITION	vacated
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. James C. Dever III, District Judge. (4:20-cr-00003-D-1)
PRECEDENTIAL VALUE	Published
PARTIES	Jacques Yves Sebastien Duroseau v. United States of America

TOPICS

- criminal procedure
- appellate procedure
- statutory interpretation
- preservation of error
- standard of review

PRACTICE AREAS

- Criminal Law
- Firearms
- Appellate Procedure

QUESTIONS PRESENTED

1. Whether the government presented sufficient evidence to convict Duroseau under 18 U.S.C. § 922(a)(5) for transporting firearms to the Haitian Army when the firearms were seized by police before delivery.
2. Whether § 922(a)(5) requires a completed transfer of firearms to an unlicensed person, or whether transporting firearms to a location where the intended recipient is located is sufficient.
3. Whether Duroseau's argument that the evidence did not show a transfer to another person was properly preserved for appeal.

HOLDINGS

1. Because § 922(a)(5) does not proscribe attempts, conviction requires a completed transfer of firearms from an unlicensed person to an unlicensed person who does not reside in the defendant's state of residence. Since Duroseau was arrested and the firearms seized before delivery to the Haitian Army, the transfer was not completed, and the evidence was insufficient.

KEY QUOTATIONS

“A person violates 18 U.S.C., Section 922(a)(5) if he 'transports' a firearm to another 'person' willfully, and at the time neither the defendant nor the person to whom it was transported was a licensed dealer, importer, manufacturer, or collector, and the defendant knew or had reasonable cause to believe that the 'person' to whom he transported the firearm resided outside North Carolina. Transport does not require delivery or transfer to another 'person.'” (at 5)

“Section 922(a)(5) creates a single offense of transferring (by any one of several means) a firearm by an unlicensed person to any other unlicensed person who resides in a different state than the state in which the defendant resides.” (at 5)

“By its terms, § 922(a)(5) does not criminalize the attempt to transfer a firearm to an out-of-state resident. . . . [but instead] criminalizes the actual transfer of firearms.” (at 11)

“Section 922(a)(5) only makes it illegal 'to transfer, sell, trade, give, transport, or deliver any firearm' to an out-of-state resident. The statute does not prohibit an attempt to do so.” (at 11)

“Section 922(a)(5) requires proof that the defendant sold a firearm to an unlicensed person as part of the government's prima facie case.” (at 13)

“We cannot affirm a criminal conviction on the basis of a theory not presented to the jury.” (at 14)

“Viewing the evidence in the light most favorable to the government, it is apparent that the government failed to present evidence showing that Duroseau violated § 922(a)(5).” (at 14)

FACTUAL BACKGROUND

Duroseau, a naturalized U.S. citizen and former Marine, planned to take firearms to Haiti to help the Haitian government combat gang violence. He asked his girlfriend to create fraudulent military orders, packed eight firearms and ammunition, and flew from North Carolina to Haiti. Upon arrival in Port-au-Prince, he was

detained by Haitian National Police and the firearms were seized. He was charged with multiple offenses, including transporting firearms to the Haitian Army in violation of 18 U.S.C. § 922(a)(5).

PROCEDURAL HISTORY

Duroseau was convicted by a jury on five counts (Counts 1-5) of a superseding indictment. He appealed only his conviction on Count Five for violating 18 U.S.C. § 922(a)(5). The district court denied his Rule 29 motion for judgment of acquittal on that count.

DISPOSITION

vacated

REMAND INSTRUCTIONS

Remand for the district court to enter a judgment of acquittal on Count Five and conduct resentencing proceedings on the remaining counts.

CASES CITED

- United States v. Colicchio, 470 F.2d 977 (4th Cir. 1972)
- United States v. James, 172 F.3d 588 (8th Cir. 1999)
- United States v. Chong Lam, 677 F.3d 190 (4th Cir. 2012)
- United States v. Fall, 955 F.3d 363 (4th Cir. 2020)
- United States v. Goode, 483 F.3d 676 (10th Cir. 2007)
- United States v. Quintana-Torres, 235 F.3d 1197 (9th Cir. 2000)
- United States v. Olano, 507 U.S. 725 (1993)
- United States v. Robinson, 744 F.3d 293 (4th Cir. 2014)
- United States v. Ramos, 852 F.3d 747 (8th Cir. 2017)
- Muscarello v. United States, 524 U.S. 125 (1998)
- Flores-Abarca v. Barr, 937 F.3d 473 (5th Cir. 2019)
- United States v. Muresanu, 951 F.3d 833 (7th Cir. 2020)
- United States v. Tyson, 653 F.3d 192 (3d Cir. 2011)
- United States v. Joseph, 530 F. App'x 911 (11th Cir. 2013)
- United States v. Fries, 725 F.3d 1286 (11th Cir. 2013)
- Chiarella v. United States, 445 U.S. 222 (1980)
- United States v. Young, 916 F.3d 368 (4th Cir. 2019)
- United States v. Day, 700 F.3d 713 (4th Cir. 2012)