

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

United States v. Joseph Alexander Armstrong

United States v. Joseph Alexander Armstrong, 898 F.2d 734 (9th Cir. 1990) · No. No. 87-5006 · Decided May 1, 1990

SUMMARY

The Ninth Circuit held that aiding and abetting under 18 U.S.C. § 2(a) is implied in every federal indictment, even when the indictment specifically charges causing under § 2(b); thus, the government's use of an aiding-and-abetting theory did not impermissibly amend the superseding indictment. The court also found no plain error in the jury instructions, which included the statutory language and implied that someone else must have committed the underlying offense, and that the district court properly denied a mistrial based on juror misconduct because the trial judge's inquiry demonstrated no prejudice. The case affirms that both § 2(a) and § 2(b) theories are available regardless of whether the defendant could be a traditional principal, and that specific mention of one subsection does not exclude the other.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Boochever; Browning; Kozinski
JURISDICTION	Federal
DECIDED	May 1, 1990
DOCKET	No. 87-5006
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Central District of California.
STANDARD OF REVIEW	Amendment of indictment: de novo; jury instructions: abuse of discretion, but plain error if no proper objection; denial of mistrial: abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Joseph Alexander Armstrong v. United States

TOPICS

- criminal procedure
- appellate procedure
- evidence

PRACTICE AREAS

criminal law

federal firearms law

QUESTIONS PRESENTED

1. Whether the district court erred by allowing the jury to consider aiding and abetting under 18 U.S.C. § 2(a) as an alternative theory when the superseding indictment only charged causing under § 2(b), thereby materially amending the indictment.
2. Whether the jury instructions on aiding and abetting were insufficient because they failed to distinguish between causing and aiding and abetting, specifically by not requiring the jury to find a knowing traditional principal.
3. Whether the district court erred in denying Armstrong's motion for a mistrial based on alleged juror misconduct.

HOLDINGS

1. Aiding and abetting is implied in every federal indictment for a substantive offense, regardless of whether the indictment specifically charges causing or aiding and abetting. The specific inclusion of § 2(b) in the superseding indictment did not preclude the implication of § 2(a), and therefore no amendment occurred.
2. Because Armstrong did not object to the wording of the instructions on the specific grounds asserted on appeal, the court reviewed for plain error. The instructions, when read as a whole, included the statutory language and implied that someone must have committed the crime charged. Any error did not materially affect the verdict.
3. The district court did not abuse its discretion in denying the mistrial. The court conducted thorough evidentiary hearings and questioning of the jurors and determined that the misconduct did not affect Armstrong's right to a fair trial.

KEY QUOTATIONS

"Aiding and abetting is implied in every federal indictment for a substantive offense." (at 736)

"The specific inclusion of Sec. 2(b) is insignificant. Whether specified or not, Sec. 2(b) is considered embodied in full in every federal indictment." (at 736-37)

"We find plain error only in exceptional circumstances, and "it must be highly probable that the error materially affected the verdict."" (at 737)

"The test is whether or not the misconduct has prejudiced the defendant to the extent that he has not received a fair trial." (at 738)

FACTUAL BACKGROUND

In 1983, Armstrong obtained the signatures of two friends and the forged signature of another on fifteen blank firearm transaction records. These records purported to document sales of guns to these friends, although none

intended to buy or received any guns. Armstrong presented the signed forms to licensed gun dealer John McGerty, who then delivered fifteen weapons to and accepted payment from Armstrong.

PROCEDURAL HISTORY

Armstrong was originally charged on April 18, 1986, with one count of conspiracy and four counts of aiding and abetting. On July 11, 1986, the Government returned a superseding indictment dropping the conspiracy and aiding and abetting charges and substituting fifteen counts alleging that Armstrong caused the making of false entries under 18 U.S.C. §§ 2(b) and 922(m). The trial began on September 15, 1986. The jury convicted on all counts. The district court denied Armstrong's motion for mistrial based on alleged juror misconduct and sentenced him to a suspended sentence and probation. Armstrong appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Aguilar, 756 F.2d 1418 (9th Cir. 1985)
- United States v. Gaskins, 849 F.2d 454 (9th Cir. 1988)
- United States v. Causey, 835 F.2d 1289 (9th Cir. 1987)
- United States v. Lester, 363 F.2d 68 (6th Cir. 1966)
- United States v. Krogstad, 576 F.2d 22 (3rd Cir. 1978)
- United States v. Roselli, 432 F.2d 879 (9th Cir. 1970)
- Pinkerton v. United States, 328 U.S. 640 (1946)
- United States v. Michaels, 796 F.2d 1112 (9th Cir. 1986)
- United States v. Grubb, 469 F. Supp. 991 (E.D. Pa. 1979)
- United States v. Kegler, 724 F.2d 190 (D.C. Cir. 1984)
- United States v. Spillone, 879 F.2d 514 (9th Cir. 1989)
- United States v. Kessi, 868 F.2d 1097 (9th Cir. 1989)
- United States v. Jones, 425 F.2d 1048 (9th Cir. 1970)
- United States v. Rosa, 705 F.2d 1375 (1st Cir. 1983)
- United States v. Klee, 494 F.2d 394 (9th Cir. 1974)
- United States v. Goliday, 468 F.2d 170 (9th Cir. 1972)