

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
ROCKINGHAM DIVISION

UNITED STATES OF AMERICA

v.

No. [REDACTED]

MOTION TO STRIKE

The defendant, [REDACTED] by and through his attorney, does hereby move this Honorable Court pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure for an Order striking from the indictment returned in this action, the portions set forth hereinafter, and in support of this motion shows unto the Court the following:

1. The indictment in this action charges that the defendant knowingly possessed a Lorcin .22 caliber semi-automatic pistol, model LT-25, [REDACTED] a New England Firearms 12 gauge shotgun, model Pardner SBI, [REDACTED] and an Interarms .22 caliber long rifle, model 22 ATD, [REDACTED] in violation of Title 18, United States Code, Sections 922(g)(1) and 924(e)(1).

2. The date of the alleged offense as set forth in the indictment is November 25, 1994.

3. The indictment further alleges that the defendant was convicted on October 9, 1980, in the Superior Court in the state of Washington of the crime of murder in the second degree, which is a crime punishable by imprisonment for a term exceeding one year.

4. At the time the alleged offense was committed, the defendant had been discharged from parole in the state of Washington as of July

26, 1993.

5. Pursuant to the laws of the state of Washington, a person convicted of a "crime of violence or of a felony in which a firearm was used or displayed" or a felony drug offense may not possess or own a short firearm or pistol. Wash. Rev. Code § 9.41.010, 9.41.040(1), (4). No restrictions apply to long guns.

6. Since the defendant had been discharged from parole in the state of Washington and was not otherwise prohibited from owning or possessing long guns, the 12 gauge shotgun and .22 caliber long rifle found in his vehicle on November 25, 1994, were lawfully in defendant's possession. The same would apply to any ammunition for such weapons found in his possession.

7. Since the defendant's possession of the 12 gauge shotgun and .22 caliber long rifle and any ammunition for said weapons was lawful, the reference in the indictment to said weapons and ammunition should be stricken.

8. At the detention hearing held in this matter on November 30, 1994, the government introduced evidence that the defendant had previously been convicted in the state of Washington of the offenses of first-degree burglary, manslaughter and second-degree murder, all of which are crimes for which imprisonment in excess of one year can be imposed.

9. The defendant's convictions for first-degree burglary and manslaughter arose from the same incident which occurred on or about August 18, 1973.

10. A review of the government's file pursuant to its open file

policy and the NCIC report of defendant's prior criminal history shows no other offenses which might arguably serve as predicate offenses for defendant to be classified as an armed career criminal pursuant to 18 U.S.C. § 924(e)(1).

11. In order for a person to be classified as an armed career criminal pursuant to 18 U.S.C. § 924(e)(1), a person would have had to have violated 18 U.S.C. § 922(g) and at the time of the commission of such violation, have been previously convicted on three occasions for a violent felony or serious drug offense, or both, committed on occasions different from one another.

12. Since the defendant's convictions for first-degree burglary and manslaughter were for offenses which occurred on the same occasion, such convictions cannot be treated as separate convictions for the purpose of establishing the three predicate offenses necessary for the defendant's classification as an armed career criminal.

13. Since the defendant would not be classified as an armed

career criminal, all references to § 924(e)(1) of Title 18 contained in the indictment should be stricken.

Respectfully submitted this the _____ day of December, 1994.

WILLIAM E. MARTIN
Federal Public Defender

GREGORY DAVIS
Assistant Federal Public Defender
North Carolina State Bar [REDACTED]
Post Office Box 400
Greensboro, NC 27402
(910) 333-5455

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by hand-delivering a copy of the same to the following address:

Clifton Barrett
Assistant United States Attorney
United States Attorney's Office
324 West Market Street
Greensboro, North Carolina 27401

This the _____ day of December, 1994.

GREGORY DAVIS
Assistant Federal Public Defender