

No. 14-1805

**In the
UNITED STATES COURT OF APPEALS
for the Sixth Circuit**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v

TIMOTHY SANDERS, ET AL

Defendants-Appellants.

**On Appeal from the United States District Court
for the Eastern District of Michigan, Southern Division**

**APPELLANT TIMOTHY SANDERS'
REPLY BRIEF ON APPEAL**

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LEGAL ARGUMENT

I. THE GOVERNMENT HAS FAILED TO PRESENT EVIDENCE TO SHOW BY A PREPONDERANCE OF THE EVIDENCE THAT USE OF A WEAPON WAS REASONABLY FORESEEABLE TO APPELLANT SANDERS FOR THE COUNT 5 AND COUNT 7 ROBBERIES.

A. COUNT 5 ROBBERY

For the Count 5 robbery, the government merely relies on the nature of the crime and does not mention specific evidence at trial that affects the question of whether a “reasonable” person in Appellant’s position would have foreseen that a gun would be present. The government generally states that “planning for and the circumstances of the crime” provide a basis for reasonable foreseeability. (App. R. 41, Gvt Brf, Page ID 76).

However, the evidence at trial showed that Appellant was not involved in planning this robbery and that the gun was not reasonably foreseeable, as set forth below. In fact, the robbery was a spur of the moment decision.¹ The PSI does not contain any information that Appellant had ever been involved with a robbery prior to the Count 5 robbery. (*See* PSI report).

The Count 5 robbery occurred in Detroit and the trial testimony indicates that Appellant was a lookout in front of the store who did not enter the store. The

¹ The jury found that Appellant did not have actual knowledge about this gun vis-a-vis, the acquittal on Count 6, brandishing a firearm, aiding and abetting.

actual robbers entered the store with no gun visible and exited via a rear entrance (R. 330, Green Transcript, Page ID#s 2852-53 and 2922-23). There was no testimony that Appellant had participated in prior robberies, knew a gun would be used or saw a gun prior to the robbery or planned the robbery. Id. The Guidelines state that “possession or use of a weapon...sometimes occur during a robbery,” recognizing that weapons are not always used during a robbery. USSG 2B3.1, Commentary, Background (emphasis added). One participant in both robberies, Jason Young, who actually possessed the gun during both robberies at issue, testified that Appellant did not know he had a gun. (R. 332, Page ID# 3127-3130). He also testified, in conformity with the Guidelines, that a gun is not a necessity for a robbery. Id. at Page ID# 3139. Young admitted he was an experienced robber. Id. at Page ID# 3132-33. Young also testified he did not know the Detroit robbery was going to take place or a gun was going to be used until he got in a van just prior to the robbery and Appellant was not in the van. (R. 332, TR, Page ID# 3127; R. 330, TR, Page ID# 2850-54). Thus, the robbery was spur of the moment. Mr. Young never saw Appellant on the day of the January 7th Detroit robbery. (R. 332, TR, Page ID# 3128).

So any notion that Appellant was included in planning a robbery with a gun has to be excluded. There is no evidence that a gun was reasonably foreseeable to Appellant. The preponderance of the evidence is in favor of Appellant.

B. COUNT 7 ROBBERY

Appellant did see a gun after the Count 5 Detroit robbery was committed. The Government therefore argues that Appellant could reasonably foresee that a gun would be used in the Count 7 Ohio robbery. However, Appellant took affirmative steps to insure that a gun would not be used in the Count 7 robbery. The government omits these steps from its Brief.²

Mr. Young did not receive the gun for the Ohio robbery until he was in a car in Ohio on the way to rob the store. Id. at Page ID #3129. Mr. Young never saw Appellant on the day of the Ohio robbery. Id. at Page ID# 3130.

Green, the leader and Government's star witness, testified that Appellant allowed his van to be used to transport a crew of robbers from Detroit, Michigan to Warren, Ohio, for the Count 7 robbery. According to Green, there were no guns in the vehicle when it traveled to Ohio. (R. 330, TR, Page ID 2859-28302). There was also testimony from Green that people traveling in the van (which included Appellant) did not want guns present for this Ohio trip. Id. at Page ID #2860. Green testified that he and co-defendant Carpenter discussed obtaining a gun in Ohio, but Appellant was not present. Id. at Page ID #2861. Carpenter was in charge of this robbery. Id. at Page ID #2862. Appellant was not included in planning the Ohio robbery. Id. at Page ID #2920, 2925. There was no evidence

² Appellant was acquitted on Count 8, brandishing a gun in Ohio robbery.

presented that Appellant knew that a gun was going to be used in the Ohio robbery. Id. at Page ID #2866, 2962, 2927, and 2933.

Appellant was not included in planning the Ohio robbery when co-defendant Young obtained a gun in Ohio without Appellant's knowledge. Appellant affirmatively expressed that he did not want involvement with guns for Ohio. Thus, the preponderance of evidence lies with Appellant on this issue.

CONCLUSION AND RELIEF REQUESTED

The deletion of the 5 points added for Counts 6 and 8 results in an offense level of 25 and a criminal history of V, with a 100-125 month advisory guideline range significantly lower than the 170 month sentence which was imposed.

WHEREFORE, Appellant TIMOTHY SANDERS, respectfully requests that this Honorable Court consider all arguments raised in Appellant's Brief, vacate the sentence, and remand for resentencing.

Respectfully submitted,

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DATED: May 26, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date the foregoing document, **Appellant's Reply Brief on Appeal**, was filed and served on all parties or their counsel of record via the CM/ECF Document Appellate Filing System.

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