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United States v. One Assortment of 89 Firearms

465 U.S. 354 (1984)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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CJ
~~Please join me~~
~~WJ~~

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1047

UNITED STATES, PETITIONER *v.* ONE ASSORTMENT
OF 89 FIREARMS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[January —, 1984]

CHIEF JUSTICE BURGER delivered the opinion of the
Court.

We granted certiorari to decide whether a gun owner's acquittal on criminal charges involving firearms precludes a subsequent *in rem* forfeiture proceeding against those same firearms.

I

A

On January 20, 1977, the Bureau of Alcohol, Tobacco, and Firearms seized a cache of firearms from the home of Patrick Mulcahey. Mulcahey was subsequently indicted on charges that he had knowingly engaged in the business of dealing in firearms without a license, in violation of 18 U. S. C. § 922(a)(1).¹ At his criminal trial, Mulcahey admitted that he had no license to deal in firearms and that he had bought and sold firearms during the period set forth in the indictment. His defense was that he had been entrapped into making the illegal firearms transactions. The jury returned a verdict of not guilty.

¹ 18 U. S. C. § 922(a)(1) provides that:

"It shall be unlawful . . . for any person, except a licensed importer, licensed manufacturer, or licensed dealer, to engage in the business of importing, manufacturing, or dealing in firearms or ammunition, or in the course of such business to ship, transport, or receive any firearm or ammunition in interstate or foreign commerce."

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Supreme Court of the United States
Washington, D. C. 20543

*We overhauled
the case*

March 8, 1984

CHAMBERS OF
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE

Re: 82-1047 - United States v. One Assortment of 89 Firearms

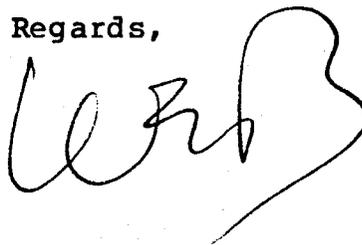
One case has been held for No. 82-1047, United States v. One Assortment of 89 Firearms. It is No. 82-5857, Aponte v. United States.

DEA agents arrested petitioner Aponte and his wife in their apartment on charges relating to a drug transaction. At the time of the arrest, the agents seized \$2,500 in cash from the apartment. Petitioner pleaded guilty to the charges; his wife was acquitted. The Government then initiated forfeiture proceedings under 21 U.S.C. §881(a)(6), contending that the seized funds were the proceeds of illegal drug dealings. Under 21 U.S.C. §881(d), which incorporates the forfeiture procedures of 19 U.S.C. §1615, petitioner had the burden of proving that the cash was unconnected with the illegal drug trade. Although petitioner presented evidence that the money had been earned legally, the jury found for the Government. The Second Circuit affirmed. Now, petitioner objects to the burden of proof in forfeiture actions under 21 U.S.C. §881; he contends that due process requires the Government to bear the burden of proving that the seized funds were connected with the illegal drug trade.

The case has little in common with United States v. One Assortment of 89 Firearms. 89 Firearms considered the question whether a prior acquittal on criminal firearms charges bars a subsequent in rem forfeiture action under 18 U.S.C. §924. No question regarding the burden of proof in forfeiture actions was presented or discussed.

No conflict exists on the issue presented, so I would allow the lower courts to grapple with the problem for a time. The Second Circuit did not address petitioner's contention directly and it might be more helpful to wait for another case with which to review this issue. I WILL VOTE TO DENY THE PETITION.

Regards,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 27, 1983

No. 82-1047

United States v. One Assortment
of 89 Firearms

Dear Chief,

I agree.

Sincerely,

The Chief Justice

Copies to the Conference

HAB

X

December 27, 1983

Re: 82-1047 - United States v. One
Assortment of 89 Firearms

Dear Chief,

Please join me.

Sincerely,

BRW

The Chief Justice

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sps

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 17, 1984

Re: No. 82-1047-United States v. One Assortment
of 89 Firearms

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 28, 1983

Re: No. 82-1047 - U. S. v. One Assortment of 89 Firearms

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 27, 1983

82-1047 United States v. One Assortment of 89 Firearms

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

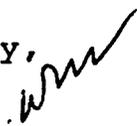
December 30, 1983

Re: No. 82-1047 United States v. One Assortment of
89 Firearms

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 30, 1983

Re: 82-1047 - United States v. One
Assortment of 89 Firearms

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 3, 1984

No. 82-1047 U. S. v. One Assortment of
89 Firearms

Dear Chief,

Please join me.

Sincerely,



The Chief Justice

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