

IN THE COURT OF APPEALS OF IOWA

No. 0-385 / 89-1466

FILED

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CLERK SUPREME COURT

STATE OF IOWA,

Appellee,

vs.

JAMES COULSON,

Appellant.

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Appeal from the Iowa District Court for Polk County,
Thomas A. Renda, District Associate Judge.

The appellant appeals his convictions and sentences, following a bench trial, for two counts of carrying weapons in violation of Iowa Code section 724.4. **AFFIRMED IN PART AND REMANDED.**

Raymond E. Rogers, State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Mark Joel Zbieroski, Assistant Attorney General, James Smith, County Attorney, and Kathleen Deal, Assistant County Attorney, for appellee.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

HAYDEN, J.

James Coulson entered the Des Moines office of the Internal Revenue Service on May 13, 1989. Treasury agents noticed Coulson was carrying a bag and asked him what was inside it. Coulson thereupon revealed he was carrying two loaded guns. The treasury agents unloaded the guns and returned them. They then allowed Coulson to leave but then telephoned the Des Moines Police Department.

On the same day, about four hours later, Des Moines police officers apprehended Coulson when he visited the police station. He was once again carrying two loaded guns of the same general description as those found by the treasury agents.

Coulson was charged with two counts of the crime of carrying weapons, a violation of Iowa Code section 724.4. Following a bench trial on stipulated facts, he was convicted of both counts. The court then sentenced him to two concurrent prison terms, each for up to two years.

Coulson has appealed his convictions and sentences.

Coulson contends the district court erred by finding him guilty of two counts of the charge of carrying weapons. He claims the charges only assert he was carrying two weapons on one occasion. He argues the evidence establishes only one violation, rather than two. He therefore asks one of the two convictions be vacated. The State responds both convictions should stand because the evidence showed Coulson had carried weapons on two separate

occasions: once in the federal building and again when apprehended by Des Moines police officers about four hours later.

Coulson also contends the sentencing court erred by failing to state its reasons for choosing the sentences. The State agrees this error occurred and joins in Coulson's request the case be remanded for resentencing.

Our standard of review is for errors of law. Iowa R. App. P. 4.

The essence of Coulson's claim is the charges are duplicative. One charge is for one weapon, the second is for the other weapon. He contends under the statute "going armed" refers includes both guns. Iowa Code §724.4. Under the wording of the charges, he should only be convicted once. He claims the charges only assert he was carrying two weapons on one occasion.

The trial information reads:

...the State of Iowa, accuses JAMES WALTER COULSON of the crimes of

CT.I CARRYING WEAPONS, in violation of
 Section 724.4 of the 1987 Code of Iowa
CT.II CARRYING WEAPONS, in violation of
 Section 724.4 of the 1987 Code of Iowa

and charges that the above-named defendant,
on or about the 13th day of May, 1989, in the
County of Polk and State of Iowa did

CT.I go armed with a dangerous weapon,
 to-wit: a loaded 45 cal Colt, concealed
 on or about his person.
CT.II go armed with a dangerous weapon,
 to-wit: a 357 Colt Python, concealed on
 or about his person. . . .

Under the stipulated facts, Coulson admits to have gone to the Federal Building on May 13, 1989. While in the I.R.S. office, treasury agents discovered the loaded handguns, unloaded them, and returned them after informing Coulson he could not have weapons in the Federal Building.

Later that same day, Coulson was apprehended when he went to the Des Moines Police Station. He again had the same handguns on his person. Once again they were fully loaded.

The State has discretion to charge as it sees fit. We determine the State is justified in charging going armed with the "loaded 45 cal Colt" on the first occasion in the Federal Building. Similarly, it may charge going armed with the "357 Colt Python" on the second occasion in the Des Moines Police Station.

Contrary to the assessment of the appellant, when the information is read along with the minutes/police reports, the district court properly ruled that the appellant was charged with "two separate actions" on "two different occasions" with "two different guns." See State v. Epps, 322 N.W.2d 288, 291 (Iowa 1982) (viewing the information along with the minutes). See also City of Cedar Falls v. Flett, 330 N.W.2d 251, 257 (Iowa 1983) (no double jeopardy violation where defendant was convicted and sentenced for twenty-three separate violations arising out of one decision not to remove junked automobiles).

The appellant carried weapons twice--once into the Federal Building and later into the Des Moines Police Station. Consequently, because the appellant went armed on more than one occasion, the appellant fails to show what difference it would have made whether he was charged with carrying a "45 cal Colt" into the Federal Building and carrying a "357 Colt Python" into the police station, or vice versa.

Even if appellant had been charged with carrying two weapons on one occasion, a conviction and sentence on one charge would not be a bar to a judgment upon another because the evidence required to support a conviction on one would not suffice to support a conviction on the other. See City of Cedar Falls v. Flett, 330 N.W.2d, 251, 257 Iowa 1983) (citing State v. Birkestrand, 239 N.W.2d 353, 363 (Iowa 1976) test for double jeopardy). Although appellant's carrying of guns was a single act, the carrying of each gun is a separate offense because to go armed means the weapon has to be in a place where it was readily accessible to the appellant. Iowa Criminal Jury Instructions No. 2400.5. One of the appellant's guns was located in his boot and the other in a carrying bag. Circumstances may have dictated that the gun in his boot was readily accessible but not the gun in his bag. See City of Cedar Falls v. Flett, 330 N.W.2d at 257. A conviction on one count and an acquittal on another would not have brought about a contradiction on the face of the

verdict. Id. "[A] conviction and sentence on one charge is a bar to judgment upon another only if the evidence required to support a conviction on one would suffice to warrant a conviction on the other." Id.

Additionally, the stipulated minutes of testimony show Coulson must have reloaded his guns between the time the treasury agents returned them to him unloaded and when he was arrested in the police station. This separate deliberate action accentuates the correctness of charging Coulson with going armed on two separate occasions. We affirm the district court on this matter.

Coulson also claims the district court failed to state reasons for imposition of sentence as required by the Iowa Rules of Criminal Procedure. The rule requires the district court "shall state on the record its reason for selecting the particular sentence." Iowa R. Crim. P. 22(3)(d). The State agrees the district court failed to state its reasons for the sentence. We remand this case for sentencing in accordance with this opinion.

AFFIRMED IN PART AND REMANDED.