

Watson Vs. United States

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Appeal No. : 06-571

Appellant : Watson

Respondent : United States

Judgement :

Watson v. United States - 06-571 (2007)

SYLLABUS

OCTOBER TERM, 2007

WATSON V. UNITED STATES

SUPREME COURT OF THE UNITED STATES

WATSON v . UNITED STATES

certiorari to the united states court of appeals for the fifth circuit

No. 06-571.Argued October 9, 2007-Decided December 10, 2007

After trading a controlled substance for a pistol, petitioner Watson was indicted for, *inter alia* , violating 18 U. S. C. 924(c)(1)(A), which sets a mandatory minimum

sentence, depending on the facts, for a defendant who, during and in relation to any drug trafficking crime[,] uses a firearm. The statute does not define uses, but this Court has spoken to it twice. In holding that a criminal who trades his firearm for drugs uses it within the meaning of 924(c)(1), *Smith v. United States* , [508 U. S. 223](#) , 241, the Court rested primarily on the ordinary or natural meaning of the verb in context, *id.*, at 228, understanding its common range as going beyond employment as a weapon to trading a weapon for drugs, *id.*, at 230. Later, in holding that merely possessing a firearm kept near the scene of drug trafficking is not use under 924(c)(1), the Court, in *Bailey v. United States* , [516 U. S. 137](#) , again looked to ordinary or natural meaning, *id.*, at 145, deciding that 924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense, *id.*, at 143. Watson pleaded guilty but reserved the right to challenge the factual basis for a 924(c)(1)(A) conviction and sentence. The Fifth Circuit affirmed on its precedent foreclosing any argument that Watson had not used a firearm.

Held: A person does not use a firearm under 18 U. S. C. 924(c)(1)(A) when he receives it in trade for drugs. Pp. 4-9.

(a) The Governments position lacks authority in either precedent or regular English. Neither *Smith*, which addressed only the trader who swaps his gun for drugs, not the trading partner who ends up with the gun, nor *Bailey*, which ruled that a gun must be made use of actively to satisfy 924(c)(1)(A), decides this case. With no statutory definition, the meaning of uses has to turn on everyday meaning revealed in phraseology that strikes the ear as both reasonable and normal. *Smith, supra* , 228, 230. When Watson handed over the drugs for the pistol, the officer used the pistol to get the drugs, but regular speech would not say that Watson himself used the pistol in the trade. Pp. 4-5.

(b) The Governments first effort to trump ordinary English is rejected. Noting that 924(d)(1) authorizes seizure and forfeiture of firearms intended to be used in certain crimes, the Government infers that since some of those offenses involve receipt of a firearm, use necessarily includes receipt of a gun even in a barter

transaction. The Governments reliance on *Smith* for the proposition that the term must be given the same meaning in both subsections overreads *Smith* . The common verb use is not at odds in the two subsections but speaks to different issues in different voices and at different levels of specificity. Section 924(d)(1) indicates that a gun can be used in a receipt crime, but does not say whether both parties to a transfer use the gun, or only one, or which one; however, 924(c)(1)(A) requires just such a specific identification. Pp. 5-7.

(c) Nor is the Governments second effort to trump ordinary English persuasive. It claims that failing to treat receipt in trade as use would create unacceptable asymmetry with *Smith*; *i.e.*, it would be strange to penalize one side of a gun-for-drugs exchange but not the other. The problem is not with *Smith*, however, but with the limited malleability of the language it construed, and policy-driven symmetry cannot turn receipt-in-trade into use. Whatever the tension between the prior result and the outcome here, law depends on respect for language and would be served better by statutory amendment than by racking statutory language to cover a policy it fails to reach. Pp. 8-9.

191 Fed. Appx. 326, reversed and remanded.

Souter, J., delivered the opinion of the Court, in which Roberts, C. J., and Stevens, Scalia, Kennedy, Thomas, Breyer, and Alito, JJ., joined. Ginsburg, J., filed an opinion concurring in the judgment.

Watson v. United States - 06-571 (2007)

OPINION OF THE COURT
WATSON V. UNITED STATES
552 U. S. ____ (2007)

SUPREME COURT OF THE UNITED STATES
NO. 06-571

MICHAEL A. WATSON, PETITIONER v. UNITED STATES

on writ of certiorari to the united states court of appeals for the fifth circuit

[December 10, 2007]

Justice Souter delivered the opinion of the Court.

The question is whether a person who trades his drugs for a gun uses a firearm during and in relation to [a] drug trafficking crime within the meaning of 18 U. S. C. 924(c)(1)(A).[[Footnote 1](#)] We hold that he does not.

I

A

Section 924(c)(1)(A) sets a mandatory minimum sentence, depending on the facts, for a defendant who, during and in relation to any crime of violence or drug trafficking crime[,] uses or carries a firearm.[[Footnote 2](#)] The statute leaves the term uses undefined, though we have spoken to it twice before.

Smith v. United States , [508 U. S. 223](#) (1993) raised the converse of today's question, and held that a criminal who trades his firearm for drugs uses it during and in relation to a drug trafficking offense within the meaning of 924(c)(1). *Id.* , at 241. We rested primarily on the ordinary or natural meaning of the verb in context, *id.* , at 228, and understood its common range as going beyond employment as a weapon: it is both reasonable and normal to say that petitioner used his MAC-10 in his drug trafficking offense by trading it for cocaine, *id.* , at 230.

Two years later, the issue in *Bailey v. United States* , [516 U. S. 137](#) (1995) was whether possessing a firearm kept near the scene of drug trafficking is use under 924(c)(1). We looked again to ordinary or natural meaning, *id.* , at 145, and decided that mere possession does not amount to use: 924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense, *id.* , at 143.[[Footnote 3](#)]

B

This third case on the reach of 924(c)(1)(A) began to take shape when petitioner, Michael A. Watson, told a Government informant that he wanted to acquire a gun. On the matter of price, the informant quoted no dollar figure but suggested that Watson could pay in narcotics. Next, Watson met with the informant and an undercover law enforcement agent posing as a firearms dealer, to whom he gave 24 doses of oxycodone hydrochloride (commonly, OxyContin) for a .50 caliber semiautomatic pistol. When law enforcement officers arrested Watson, they found the pistol in his car, and a later search of his house turned up a cache of prescription medicines, guns, and ammunition. Watson said he got the pistol to protect his other firearms and drugs. App. to Pet. for Cert. 11a.

A federal grand jury indicted him for distributing a Schedule II controlled substance and for using the pistol during and in relation to that crime, in violation of 924(c)(1)(A).[[Footnote 4](#)] Watson pleaded guilty across the board, reserving the right to challenge the factual basis for a 924(c)(1)(A) conviction and the added consecutive sentence of 60 months for using the gun. The Court of Appeals affirmed, 191 Fed. Appx. 326 (CA5 2006) (*per curiam*) , on Circuit precedent foreclosing any argument that Watson had not used a firearm, see *id.*, at 327 (citing *United States v. Ulloa* , 94 F. 3d 949 (CA5 1996) and *United States v. Zuniga* , 18 F. 3d 1254 (CA5 1994)).

We granted certiorari to resolve a conflict among the Circuits on whether a person uses a firearm within the meaning of 18 U. S. C. 924(c)(1)(A) when he trades narcotics to obtain a gun.[[Footnote 5](#)] 549 U. S. ____ (2007). We now reverse.

II

A

The Government's position that Watson used the pistol under 924(c)(1)(A) by receiving it for narcotics lacks authority in either precedent or regular English. To begin with, neither *Smith* nor *Bailey* implicitly decides this case. While *Smith* held that firearms may be used in a barter transaction, even with no violent

employment, see 508 U. S. , at 241, the case addressed only the trader who swaps his gun for drugs, not the trading partner who ends up with the gun. *Bailey* , too, is unhelpful, with its rule that a gun must be made use of actively to satisfy 924(c)(1)(A), as an operative factor in relation to the predicate offense. 516 U. S., at 143. The question here is whether it makes sense to say that Watson employed the gun at all; *Bailey* does not answer it.

With no statutory definition or definitive clue, the meaning of the verb uses has to turn on the language as we normally speak it, see, e.g., *Lopez v. Gonzales* , 549 U. S. ___, ___ (2006) (slip op., at 5); *Asgrow Seed Co. v. Winterboer* , [513 U. S. 179](#) , 187 (1995); *FDIC v. Meyer* , [510 U. S. 471](#) , 476 (1994); there is no other source of a reasonable inference about what Congress understood when writing or what its words will bring to the mind of a careful reader. So, in *Smith* we looked for everyday meaning, 508 U. S. , at 228, revealed in phraseology that strikes the ear as both reasonable and normal, *id.* , at 230. See also *Bailey*, *supra*, at 145. This appeal to the ordinary leaves the Government without much of a case.

The Government may say that a person uses a firearm simply by receiving it in a barter transaction, but no one else would. A boy who trades an apple to get a granola bar is sensibly said to use the apple, but one would never guess which way this commerce actually flowed from hearing that the boy used the granola. Cf. *United States v. Stewart* , 246 F. 3d 728, 731 (CA9 2001) ([W]hen a person pays a cashier a dollar for a cup of coffee in the courthouse cafeteria, the customer has not used the coffee. He has only used the dollar bill). So, when Watson handed over the drugs for the pistol, the informant or the agent[[Footnote 6](#)] used the pistol to get the drugs, just as *Smith* held, but regular speech would not say that Watson himself used the pistol in the trade. A seller does not use a buyers consideration, *United States v. Westmoreland* , 122 F. 3d 431, 436 (CA7 1997), and the Governments contrary position recalls another case; *Lopez*, *supra*, at ___ (slip op., at 7), rejected the Governments interpretation of 18 U. S. C. 924(c)(2) because we do not normally speak or write the Governments way.[[Footnote 7](#)]

B

The Government would trump ordinary English with two arguments. First, it relies on *Smith* for the pertinence of a neighboring provision, 18 U. S. C. 924(d)(1), which authorizes seizure and forfeiture of firearms intended to be used in certain criminal offenses listed in 924(d)(3). Some of those offenses involve receipt of a firearm,[[Footnote 8](#)] from which the Government infers that use under 924(d) necessarily includes receipt of a gun even in a barter transaction. *Smith* is cited for the proposition that the term must be given the same meaning in both subsections, and the Government urges us to import use as receipt in barter into 924(c)(1)(A).

We agree with the Government that 924(d) calls for attention; the reference to intended use in a receipt crime carries some suggestion that receipt can be use (more of a hint, say, than speaking of intended use in a crime defined as exchange). But the suggestion is a tepid one and falls short of supporting what is really an attempt to draw a conclusion too specific from a premise too general.

The *Smith* majority rested principally on ordinary speech in reasoning that 924(c)(1) extends beyond use as a weapon and includes use as an item of barter, see 508 U. S., at 228-230, and the *Smith* opinion looks to 924(d) only for its light on that conclusion. It notes that the intended to be used clause of 924(d)(1) refers to offenses where the firearm is *not* used as a weapon but instead as an item of barter or commerce, *id.*, at 234, with the implication that Congress intended use to reach commercial transactions, not just gun violence, in 924(d) generally, see *id.*, at 234-235. It was this breadth of treatment that led the *Smith* majority to say that, [u]nless we are to hold that using a firearm has a different meaning in 924(c)(1) than it does in 924(d)-and clearly we should not-we must reject petitioners narrow interpretation. *Id.*, at 235 (citation omitted); see also *Bailey*, *supra*, at 146 ([U]sing a firearm should not have a different meaning in 924(c)(1) than it does in 924(d) (internal quotation marks omitted)).

The Government overreads *Smith* . While the neighboring provision indicates that a firearm is used nonoffensively, and supports the conclusion that a gun can be used in barter, beyond that point its illumination fails. This is so because the utility

of 924(d)(1) is limited by its generality and its passive voice; it tells us a gun can be used in a receipt crime, but not whether both parties to a transfer use the gun, or only one, or which one. The nearby subsection (c)(1)(A), however, requires just such a specific identification. It provides that a person who uses a gun in the circumstances described commits a crime, whose perpetrator must be clearly identifiable in advance.

The agnosticism on the part of 924(d)(1) about who does the using is entirely consistent with common speech understanding that the first possessor is the one who uses the gun in the trade, and there is thus no cause to admonish us to adhere to the paradigm of a statute as a symmetrical and coherent regulatory scheme, in which the operative words have a consistent meaning throughout, *Gustafson v. Alloyd Co.* , [513 U. S. 561](#) , 569 (1995), or to invoke the standard principle of statutory construction that identical words and phrases within the same statute should normally be given the same meaning, *Powerex Corp. v. Reliant Energy Services, Inc.* , 551 U. S. ___, ___ (2007) (slip op., at 7). Subsections (d)(1) and (c)(1)(A) as we read them are not at odds over the verb use; the point is merely that in the two subsections the common verb speaks to different issues in different voices and at different levels of specificity. The provisions do distinct jobs, but we do not make them guilty of employing the common verb inconsistently.[[Footnote 9](#)]

C

The second effort to trump regular English is the claim that failing to treat receipt in trade as use would create unacceptable asymmetry with *Smith* . At bottom, this atextual policy critique says it would be strange to penalize one side of a gun-for-drugs exchange but not the other: [t]he danger to society is created not only by the person who brings the firearm to the drug transaction, but also by the drug dealer who takes the weapon in exchange for his drugs during the transaction, Brief for United States 23.

The position assumes that *Smith* must be respected, and we join the Government at least on this starting point. A difference of opinion within the Court (as in *Smith*) does not keep the door open for another try at statutory

construction, where *stare decisis* has special force [since] the legislative power is implicated, and Congress remains free to alter what we have done. *Patterson v. McLean Credit Union* , [491 U. S. 164](#) , 172-173 (1989). What is more, in 14 years Congress has taken no step to modify *Smith* 's holding, and this long congressional acquiescence has enhanced even the usual precedential force we accord to our interpretations of statutes, *Shepard v. United States* , 544 U. S. 13 , 23 (2005).

The problem, then, is not with the sturdiness of *Smith* but with the limited malleability of the language *Smith* construed, and policy-driven symmetry cannot turn receipt-in-trade into use. Whatever the tension between the prior result and the outcome here, law depends on respect for language and would be served better by statutory amendment (if Congress sees asymmetry) than by racking statutory language to cover a policy it fails to reach.

The argument is a peculiar one, in fact, given the Governments take on the current state of 924(c)(1)(A). It was amended after *Bailey* and now prohibits not only using a firearm during and in relation to a drug trafficking crime, but also possessing one in furtherance of such a crime. 18 U. S. C. 924(c)(1)(A); see n. 3, *supra* . The Government is confident that a drug dealer who takes a firearm in exchange for his drugs generally will be subject to prosecution under this new possession prong. Brief for United States 27; see Tr. of Oral Arg. 41 (Watsons case could have been charged as possession); cf. *United States v. Cox* , 324 F. 3d 77, 83, n. 2 (CA2 2003) (For defendants charged under 924(c) after [the post-*Bailey*] amendment, trading drugs for a gun will probably result in . . . possession [in furtherance of a drug trafficking crime]). This view may or may not prevail, and we do not speak to it today, but it does leave the appeal to symmetry underwhelming in a contest with the English language, on the Governments very terms.

Given ordinary meaning and the conventions of English, we hold that a person does not use a firearm under 924(c)(1)(A) when he receives it in trade for drugs. The judgment of the Court of Appeals is reversed, and the case is remanded for

further proceedings consistent with this opinion.

It is so ordered.

[Footnote 1](#)

Formerly 18 U. S. C. 924(c)(1) (1994 ed.).

[Footnote 2](#)

Any violation of 924(c)(1)(A), for example, demands a mandatory minimum sentence of 5 years. See 18 U. S. C. 924(c)(1)(A)(i). If the firearm is brandished, the minimum goes up to 7 years, see 924(c)(1)(A)(ii); if the firearm is discharged, the minimum jumps to 10 years, see 924(c)(1)(A)(iii).

[Footnote 3](#)

In 1998, Congress responded to *Bailey* by amending 924(c)(1). The amendment broadened the provision to cover a defendant who in furtherance of any [crime of violence or drug trafficking] crime, possesses a firearm. 18 U. S. C. 924(c)(1)(A). The amendment did not touch the use prong of 924(c)(1).

[Footnote 4](#)

The grand jury also indicted Watson as a felon in possession of a firearm, in violation of 922(g)(1). This count referred to the five firearms found in Watsons house, but not the pistol he got for the narcotics.

[Footnote 5](#)

Compare *United States v. Cotto* , 456 F. 3d 25 (CA1 2006) (trading drugs for a firearm constitutes use of the firearm under 924(c)(1)(A)); *United States v. Sumler* , 294 F. 3d 579 (CA3 2002) (same); *United States v. Ramirez-Rangel* , 103 F. 3d 1501 (CA9 1997) (same); *United States v. Ulloa* , 94 F. 3d 949 (CA5 1996) (same); *United States v. Cannon* , 88 F. 3d 1495 (CA8 1996) (same), with *United States v. Montano* , 398 F. 3d 1276 (CA11 2005) (*per curiam*) (defendant did not use a firearm within the meaning of 924(c)(1)(A) when he traded drugs for a firearm); *United States v. Stewart* , 246 F. 3d 728 (CA10 2001) (same); *United States v. Warwick* , 167 F. 3d 965 (CA6 1999) (same); *United States v. Westmoreland* , 122 F. 3d 431 (CA7 1997) (same). The Fourth

Circuit has held that a defendant used a firearm where he gave cocaine base to a compatriot in exchange for assistance in obtaining a gun. See *United States v. Harris* , 39 F. 3d 1262 (1994). Subsequent unpublished opinions in that Circuit have relied on *Harris* for the proposition that the receipt of a firearm in exchange for drugs constitutes use of the firearm. See, e.g., *United States v. Belcher* , No. 98-4845, 1999 WL 1080103 (CA4, Nov. 29, 1999) (*per curiam*) .

[Footnote 6](#)

The record does not say which.

[Footnote 7](#)

Dictionaries confirm the conclusion. Use is concededly elastic, *Smith v. United States* , [508 U. S. 223](#) , 241 (1993) (Scalia, J., dissenting), but none of its standard definitions stretch far enough to reach Watsons conduct, see, e.g., Websters New International Dictionary of the English Language 2806 (2d ed. 1939) (to employ); The Random House Dictionary of the English Language 2097 (2d ed. 1987) (to apply to ones own purposes; put into service; make use of); Blacks Law Dictionary 1541 (6th ed. 1990) ([t]o avail oneself of; to utilize); see also *Smith, supra*, at 228-229 (listing various dictionary definitions).

[Footnote 8](#)

See, e.g., 18 U. S. C. 922(j) (prohibiting, *inter alia*, the receipt of a stolen firearm in interstate commerce); 924(b) (prohibiting, *inter alia*, the receipt of a firearm in interstate commerce with the intent to commit a felony).

[Footnote 9](#)

For that matter, the Governments argument that use must always have an identical meaning in 924(c)(1)(A) and 924(d)(1) would upend *Bailey v. United States* , [516 U. S. 137](#) (1995). One of the relevant predicate offenses referred to by 924(d)(1) is possession of any stolen firearm [in] interstate or foreign commerce. 18 U. S. C. 922(j). If we were to hold that all criminal conduct covered by the intended to be used clause in 924(d)(1) is use for purposes of 924(c)(1)(A), it would follow that mere possession is use. But that would squarely conflict with our considered and unanimous decision in *Bailey* that use must connote more than mere possession of a firearm. 516 U. S., at 143.

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SUPREME COURT OF THE UNITED STATES

NO. 06-571

MICHAEL A. WATSON, PETITIONER *v.* UNITED STATES

on writ of certiorari to the united states court of appeals for the fifth circuit

[December 10, 2007]

Justice Ginsburg, concurring in the judgment.

It is better to receive than to give, the Court holds today, at least when the subject is guns. Distinguishing, as the Court does, between trading a gun for drugs and trading drugs for a gun, for purposes of the 18 U. S. C. 924(c)(1) enhancement, makes scant sense to me. I join the Courts judgment, however, because I am persuaded that the Court took a wrong turn in *Smith v. United States* , [508 U. S. 223](#) (1993), when it held that trading a gun for drugs fits within 924(c)(1)s compass as us[e] of a firearm during and in relation to any drug trafficking crime. For reasons well stated by Justice Scalia in his dissenting opinion in *Smith*, 508 U. S., at 241, I would read the word use in 924(c)(1) to mean use as a weapon, not use in a bartering transaction. Accordingly, I would overrule *Smith* , and thereby render our precedent both coherent and consistent with normal usage. Cf. *Henslee v. Union Planters Nat. Bank & Trust Co.* , [335 U. S. 595](#) , 600 (1949) (Frankfurter, J., dissenting) (Wisdom too often never comes, and so one ought not to reject it merely because it comes late.).