

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 01-1668

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United States of America,	*	
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Appellee,	*	Appeal from the United States
	*	District Court for the District
v.	*	of Nebraska.
	*	
Donald D. Mueller,	*	[UNPUBLISHED]
	*	
Appellant.	*	

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Submitted: August 21, 2001

Filed: September 7, 2001

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Before ROSS, FAGG, and BEAM, Circuit Judges.

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PER CURIAM.

Donald D. Mueller was convicted of participating in a drug-related conspiracy and carrying a firearm while he was trafficking the drugs. Mueller now raises several contentions related to his trial. Having reviewed the record, the briefs, and the arguments of the parties, we reject his contentions and affirm.

First, we conclude the district court\* correctly denied Mueller's motion raising search and seizure issues. We agree with the district court that the challenged searches were supported by probable cause that evidence of federal offenses could be found at Mueller's home.

Second, the record contains substantial evidence on which the jury reasonably could have found Mueller guilty of the charges.

Third, Mueller's assertions that the district court committed plain error when it failed to include the definition of a firearm in the jury instructions, and that Mueller was prejudiced when the district court gave the jury a supplemental instruction about a term in the charging statute in Mueller's absence, are without legal merit. The Colt .45 handgun taken from Mueller at the time of his arrest was before the jury during the trial, Mueller never contended at the trial that the Colt .45 was not a firearm, and it is clear to us the definitional instruction Mueller now requests could not have changed the outcome of his trial. As far as the supplemental instruction clarifying a term in the charging statute is concerned, although prejudice is presumed because Mueller was not present for the communication between the court and the deliberating jury, the presumption is overcome here because the communication involved a question of law rather than fact and did nothing more than give the jury a neutral, correct explanation of the law. Further, Mueller's attorney was satisfied with the court's response to the jury request and no objection was raised before the appeal. See United States v. Dockter, 58 F.3d 1284, 1287 (8th Cir. 1995).

Finally, we decline to consider Mueller's ineffective assistance of counsel claim on direct appeal. This claim is best presented on a motion under 28 U.S.C. § 2255. See United States v. Martin, 59 F.3d 767, 771 (8th Cir. 1995).

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\*The Honorable Joseph F. Bataillon, United States District Judge for the District of Nebraska.

We thus affirm Mueller's convictions. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.