

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 01-2073

United States of America,

Appellee,

v.

Tyree L. West,

Appellant.

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Appeal from the United States
District Court for the Western
District of Missouri.

[UNPUBLISHED]

Submitted: September 13, 2001

Filed: September 20, 2001

Before WOLLMAN, Chief Judge, RICHARD S. ARNOLD and FAGG, Circuit
Judges.

PER CURIAM.

Tyree L. West was arrested for possessing a firearm (firearm I) after a felony conviction. West was released pending further investigation, then indicted and rearrested. West possessed another firearm (firearm II) at the time of his second arrest. Having waived his right to a jury trial, West was convicted by the district court* for possessing firearm I. West now appeals, arguing the court impermissibly admitted

*The Honorable Howard F. Sachs, Senior United States District Judge for the Western District of Missouri.

evidence of firearm II in violation of Federal Rule of Evidence 404(b). We disagree. In our view, the district court did not admit the disputed evidence. Stating it would rule on West's continuing Rule 404(b) objection after the case was submitted, the district court provisionally received the government's offer of proof of West's possession of firearm II. The district court then sustained the objection when the government attempted to cross examine West about this firearm. Additionally, the district court neither mentioned nor considered the government's evidence about firearm II in its findings of West's guilt.

We thus affirm West's conviction. See 8th Cir. R. 47B.

A true copy.

Attest:

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