

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-4397

United States of America,

Appellee,

v.

Robert Lee Weaselhead, Jr.

Appellant.

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* Appeal from the United States

* District Court for the

* District of Nebraska.

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[PUBLISHED]

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Submitted: January 11, 1999

Filed: January 29, 1999

Before BOWMAN, Chief Judge, McMILLIAN, RICHARD S. ARNOLD, FAGG,
WOLLMAN, BEAM, LOKEN, HANSEN, MORRIS SHEPPARD ARNOLD,
MURPHY, En Banc.

PER CURIAM.

Chief Judge Bowman, Judge Richard S. Arnold, Judge Fagg, Judge Morris S. Arnold, and Judge Murphy would affirm the order of the district court rejecting Weaselhead's claim of double jeopardy and denying his motion to dismiss Count III of the superseding indictment. Judge McMillian, Judge Wollman, Judge Beam, Judge Loken, and Judge Hansen would reverse that order.

By the vote of an equally divided Court, the order of the district court is affirmed.

A true copy.

Attest:

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