

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 28th day of September, two thousand four.

PRESENT: HON. RALPH K. WINTER,
 HON. DENNIS JACOBS,
 HON. CHESTER J. STRAUB,
 Circuit Judges.

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UNITED STATES OF AMERICA,

Appellee,

-v.-

03-1124

JUMA SAMPSON,

Defendant-Appellant.

- - - - -X

APPEARING FOR APPELLANT: PETER J. PULLANO,
 Rochester, NY

APPEARING FOR APPELLEE: **BRET PUSCHEK**, Assistant
United States Attorney,
Rochester, NY (Michael A.
Battle, United States
Attorney, and Bradley E.
Tyler and Frank H. Sherman,
Assistant United States
Attorneys, of counsel)

Appeal from the United States District Court for the
Western District of New York (Larimer, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED that the judgment of the district
court is **AFFIRMED** in part, and **VACATED** and **REMANDED** in
part.

Defendant Juma Sampson appeals from the judgment of
conviction entered following a jury trial in the United
States District Court for the Western District of New
York (Larimer, J.). Familiarity is assumed as to the
facts, the procedural context, and the specification of
appellate issues.

In an opinion filed today, we conclude that Sampson's
convictions for offenses committed in 1998 must be
vacated because he was substantially prejudiced by the
erroneous denial of his severance motion; we affirm the
convictions for offenses committed in 2000; and we reject
Sampson's argument that it was error to enhance his
sentence under 21 U.S.C. § 841(b)(1)(A) on the basis of a
youthful offender adjudication. In this summary order,
we reject the remaining challenges.

1. Denial of a motion for a mistrial is reviewed for
abuse of discretion. E.g., United States v. Marshall,
458 F.2d 446, 451 (2d Cir. 1972). Sampson claims that
Officer Fiorica's testimony violated an in limine ruling
and warranted a mistrial. However, this testimony was
admissible under Fed. R. Evid. 404(b); and any error
would have been harmless in light of the other evidence
properly introduced by the government regarding Sampson's
prior drug dealings.

2. This Court reviews de novo the constitutional sufficiency of a search warrant; we review related factual findings for clear error. E.g., United States v. Martin, 157 F.3d 46, 52 (2d Cir. 1998). For substantially the reasons stated by the magistrate judge [JA 154] and adopted by the district judge [JA 176], probable cause supported issuance of the warrant that yielded tangible evidence from the residence in Rochester, New York. Therefore, it is unnecessary to decide whether the district court committed clear error in finding that Sampson lacked standing to challenge this seizure. [JA 152-53 (MC), 176 (DC).]

3. Denial of the defendant's Batson challenge is reviewed for clear error. E.g., United States v. Taylor, 92 F.3d 1313, 1326 (2d Cir. 1996). Here, the district court credited race-neutral explanations for the government's peremptory challenges of jurors Lott and Titus. We see no error in the district court's ruling that Sampson failed to establish pretext.

4. A challenge to the sufficiency of the evidence is reviewed de novo; it fails "if 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" United States v. Gore, 154 F.3d 34, 40 (2d Cir. 1998) (emphasis in original) (quoting Jackson v. Virginia, 443 U.S. 307, 319 (1979)). Along with other evidence, the presence of a loaded and accessible firearm at the residence provided a nexus to Sampson's drug selling operation sufficient to permit the jury to find that he possessed a firearm "in furtherance" of a drug trafficking crime in violation of 18 U.S.C. §§ 924(c) and 2. See, e.g., United States v. Finley, 245 F.3d 199, 203 (2d Cir. 2001).

5. "We review a district court's finding as to whether prior convictions are factually related for clear error." United States v. Mapp, 170 F.3d 328, 338 (2d Cir. 1999). The district court found that Sampson's 2002 New York State marijuana conviction was unrelated to the present offenses and therefore should count toward his criminal history. This was not clear error. The marijuana conviction qualifies as a "prior sentence" in an "unrelated case" because it was "separated by an intervening arrest (i.e., the defendant [was] arrested for the first offense prior to committing the second offense)." United States v. Boonphakdee, 40 F.3d 538,

544 (2d Cir. 1994) (emphasis in original) (quoting USSG § 4A1.2, cmt. n.3). Furthermore, the 2002 conviction [i] did not "occur[] on the same occasion," [ii] was not "part of a single common scheme or plan," and [iii] was not "consolidated for trial or sentencing" with the instant offenses. Id. (quoting USSG § 4A1.2, cmt. n.3).

For the reasons stated in this order and in the opinion filed today, the judgment of the district court is hereby **AFFIRMED** in part, and **VACATED** and **REMANDED** in part.

FOR THE COURT:
ROSEANN B. MACKECHNIE, CLERK
By:

Lucille Carr, Deputy Clerk