

**Rosemond v. U.S., --- U.S. --- (2014)**  
**Decided March 5, 2014**

**FACTS:** During a “drug deal gone bad,” Perez had arranged to sell marijuana to Gonzales and Painter. Perez was accompanied by Joseph and Rosemond. During the transaction, Painter got into the backseat to inspect the marijuana. However, instead of a transaction, he punched the back seat occupant (it was unclear whether it was Joseph or Rosemond) and fled with the marijuana. At that point, “one of the male passengers – but again, which one is contested – exited the car and fired several shots.” All three then gave chase, but before they could catch their quarry, they were stopped by a responding officer.

Rosemond was charged with, among other things, a violation of 18 U.S.C. §924(c), “using a gun in connection with a drug trafficking crime, or aiding and abetting that offense.” Federal law further stated that anyone who assists in such crimes may be punished in the same manner as the principal. In its prosecution, the Government proceeded on two alternative theories: that he himself fired the handgun or that he aided and abetted Joseph in doing so. Arguments were made and the jury instructed on both. Rosemond was convicted, but the jury forms did not indicate under which theory the government acted.

Rosemond appealed. The Tenth Circuit Court of Appeals upheld his conviction. Rosemond requested review and the U.S. Supreme Court granted certiorari.

**ISSUE:** To convict of aiding or abetting in a crime involving a firearm under federal law, must the defendant be found to have been aware of the presence of the weapon by a cohort?

**HOLDING:** Yes

**DISCUSSION:** The Court looked to the statute and the line of cases that flowed from it. The Court agreed that under 18 U.S.C. §2 “those who provide knowing aid to persons committing federal crimes, with the intent to facilitate the crime, are themselves committing a crime.”<sup>1</sup> The Court agreed that required that the person both “take an affirmative act in furtherance of that offense” and that be done, with the “intent to facilitating the offense’s commission.”

The court noted that he Rosemond admitted that he actively participated in a drug transaction. However, he argued he had nothing to do with the firearm or the shooting. In other words, he admitted to “one element (the drug element) of a two-element crime.” The court noted that the common law crime of aiding and abetting applied to someone

---

<sup>1</sup> Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A., 511 U.S. 164 (1994).

who “facilitated any part – even though not every part – of a criminal venture. Under the logic of the common law, “every little bit helps – and a contribution to some part of a crime aids the whole.” The Courts of Appeal across the U.S. had generally agreed to that, noting that the “division of labor between two (or more) confederates thus has no significance.”

In the past, the Court had “found that intent requirement satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense.” By doing so, the subject “becomes responsible, in the typical way of aiders and abettors, for the conduct of others.” However, the question is, the subject must know that an accomplice will, such as in this case, be carrying a gun – making a drug deal an armed crime. Without that prior knowledge, he would not have the opportunity to make a decision about participation. “But when an accomplice knows nothing of a gun until it appears at the scene, he may already have completed his acts of assistance; or even if not, he may at that late point have no realistic opportunity to quit the crime.”

The Court noted that “what matters for purposes of gauging intent ... is that the defendant has chosen, with full knowledge, to participate in the illegal scheme....” It does not matter whether “he participates with a happy heart or a sense of foreboding.” The Court used an analogy:

By virtue of §924(c), using a firearm at a drug deal ups the ante. A would-be accomplice might decide to play at those perilous stakes. Or he might grasp that the better course is to fold his hand. What he should not expect is the capacity to hedge his bets, joining in a dangerous criminal scheme but evading its penalties by leaving use of the gun to someone else. Aiding and abetting law prevents that outcome, so long as the player knew the heightened stakes when he decided to stay in the game.

As such, the Court agreed that the jury instructions should have reflected the need for the jury to find that Rosemond “needed advance knowledge of a firearm’s presence.” The case was remanded back to the Tenth Circuit with the requirement that the Court look to whether the error was sufficient to overturn the conviction.

**Full Text of Opinion:** [http://www.supremecourt.gov/opinions/13pdf/12-895\\_3d9g.pdf](http://www.supremecourt.gov/opinions/13pdf/12-895_3d9g.pdf)