

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

v. : NO. 3:03CR329(EBB)

EUGENE COLEMAN :

RULING RE JUSTIFICATION/NECESSITY DEFENSE

Defendant has been indicted and charged with being a felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). Pending before the court are the government's Motion to Preclude Justification/Necessity Defense [Doc. No. 73], and Defendant's Motion in Limine re: Justification Defense [Doc. No. 59]

At the hearing held on these motions defendant proffered that he would, at an evidentiary hearing, present testimony of the defendant and nineteen witnesses with respect to the following: That on July 26, 2003, defendant's home was burglarized by one Ramos who, on arrest, gave a statement implicating William Anderson; on September 3, 2003, defendant's BMW automobile was trashed, and there was an attempted burglary of his home; on September 25, 2003, defendant was robbed at gunpoint outside his home; in late September, 2003, defendant and his son were passengers in a car driven by Anderson and defendant's son saw some of defendant's property in the car; and on October 3, 2003, three persons, including Thomas Anderson, William's son, attempted to persuade Anthony Wade to rob the defendant and Wade told the defendant's son. Defendant reported

the incidents of July 26, September 3 and September 25 to the Waterbury Police Department.

Some of the witnesses, including participants in the robbery and burglaries, would implicate William Anderson and defendant believed Anderson was attempting to terrorize him. He also believed Anderson was protected by the Waterbury Police Department and an inspector in the state's attorney's office.

The government, for the purpose of the hearing, stipulated that defendant was terrorized by Anderson and felt it was necessary to arm himself.

On the night of October 6, 2003, there was a "Stop the Violence" party at Mingle's bar where defendant worked. Defendant would testify that the inspector and a Waterbury attorney demanded that defendant hire Anderson to be a cook at the party and he refused to do so; that Anderson in a "full rage" came in to the bar and approached defendant in a threatening manner; that John Mann separated the two men and Anderson left threatening to "get" the defendant and that defendant thought his life was in danger.

Defendant then retrieved a pistol,<sup>1</sup> went out after Anderson and held the gun on him. Three police officers, who were passing the scene, stopped and arrested defendant.

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<sup>1</sup>It is unclear where the gun was located, whether somewhere in the bar or in an outside dumpster.

### Discussion

Justification may be<sup>2</sup>a defense to a charge of felon in possession under 18 U.S.C. § 922(g)(i) if (1) the defendant was under unlawful and present, imminent and impending threat of death or serious bodily injury; (2) the defendant did not negligently or recklessly place himself in a situation where he would be forced to engage in criminal activity; (3) the defendant had no reasonable legal alternative to violating the law; and (4) there was a direct causal relationship between the criminal action and the avoidance of the threatened harm. United States v. Deleveaux, 205 F.3d 1292, 1297 (11th Cir. 2000). See also United States v. Dodd, 225 F.3d 340, (3d Cir. 2000); United States v. Crittendon, 883 F.2d 326 (4th Cir. 1989); United States v. Gant, 691 F.2d 1159 (5th Cir. 1982); United States v. Singleton, 902 F.2d 471 (6th Cir.) cert. denied 498 U.S. 872 (1990); United States v. Wofford, 122 F.3d 787 (9th Cir. 1997)

For the purpose of deciding these motions, the court accepts as true the evidence proffered by defendant. However, that evidence would not be sufficient to sustain a justification/necessity defense.

At the time preceding his arrest defendant was not "under unlawful and present, imminent and impending threat of death or

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<sup>2</sup>In United States v. Williams, 2004 WL 2634281 (2d, Cir., November 19, 2004) the court assumed "without deciding, that persons charged with violating 18 U.S.C. 922(g)(1) may assert such a defense."

serious bodily injury." Anderson had already left the premises when defendant retrieved the pistol. By pursuing Anderson out of the bar, defendant recklessly placed himself in a situation where he engaged in criminal activity for which there was a reasonable legal alternative. Defendant could have remained in the bar, secured it from entry by Anderson and called the police or he could have left the bar by an alternative exit and departed from the area.

Defendant asserts his belief that Anderson enjoyed a corrupt relationship with the Waterbury Police Department and implies it would have been futile to rely on the police for assistance. He cites United States v. Gomez, 92 F.3d 770 (9th Cir. 1996) as support for his defense.

However, the facts in Gomez are dramatically different. Gomez had worked for about three months as an informant with government agents in gathering evidence incriminating Imran Mir who was charged with participating in an international drug conspiracy and who had solicited Gomez to kill six witnesses scheduled to testify against him. Mir was then indicted and charged with five counts of solicitation to commit murder and Gomez was mentioned by name in the indictment without notice to him.

Thereafter, Gomez received death threats and learned that a contract had been put out on his life. He asked federal agents to take him into protective custody, went to the county sheriff, his parole agent and several churches, receiving help

from none of these sources. Eventually he falsely told his parole agent that he was using drugs and was imprisoned for violating parole. While in custody, he received another written death threat and, after his release, one of his friends received a death threat meant for Gomez. He then armed himself with a shotgun and, after two days, two customs agents who were serving him with a subpoena found the shotgun in his possession. The court found that, under these unique circumstances, including the divulging by the government of his informant activities, Gomez should be permitted to introduce evidence tending to prove justification for his action.

Defendant's situation, even if believed by a jury, would not meet the criteria of a justification/necessity defense and, accordingly, the government's motion [Doc. No. 73] is granted and defendant's motion [Doc. No. 59] is denied.

SO ORDERED.

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ELLEN BREE BURNS, SENIOR JUDGE  
UNITED STATES DISTRICT COURT

Dated at New Haven, CT, this \_\_\_\_ day of December, 2004.