

U.S. V. Fix , 4 Fed. appx. 324 (9th Cir. 2001)

## II. Whether the Calico Liberty III Required Registration

Fix argues that the government did not prove the Calico Liberty III, found during a search of his home and business, was a weapon that required registration. Fix was convicted under 26 U.S.C. § 5861(d) of possession of an unregistered firearm. In a related provision, HN2 "firearm" is defined by a list of eight weapons and a catchall provision of "any other weapon." See 26 U.S.C. § 5845(a). "Any other weapon" includes "any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive," but not "a pistol . . . having a rifled bore . . ." See 26 U.S.C. § 5845(e). Weapons not included in the definition of firearm in § 5845 need not be registered under § 5861(d). Fix argues that his Calico was a pistol, [\*\*5] met the exception in § 5845(e), and did not need to be registered under § 5861.

We agree that the Government failed to prove a violation of § 5861(d) for two reasons.

First, the weapon does not fit the definition required by the statute. HN3 The provision defining "pistol" for the purposes of the statute is 27 C.F.R. § 179.11, which defines a pistol as "a weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand . . . ." The government argues that because the Calico was modified to be fired with two hands, it "falls out" of the definition of pistol and falls back into the definition of "any other weapon" in § 5845. This argument ignores the definition's requirement that the weapon be capable of being held with one hand at the time it was originally designed and made. As written, this definition does not

consider modifications of the weapon by the owner. The Calico was originally designed and made to be fired with one hand, and still could be, despite the addition of a foregrip.

Second, the definition of "any other weapon" in §§ 5845(a) and (e) expressly excludes weapons with a rifled [\*\*6] bore. We assume that the "any other weapon" provision was intended as a catch-all category in which to gather sawed-off shotguns and other hybrid weapons. A sawed off shotgun may be concealed like a pistol, but would have the smooth bore of a shotgun. The Government's witness stated that the Calico Liberty III had a rifled bore, and thus, cannot be considered "any other weapon."

Accordingly, the conviction on Count V must be reversed for insufficiency of the evidence.

I was unable to find more than a synopsis posting of the ruling, couldn't find the complete ruling, so I PM'ed Gene about it and he mentioned that it was an unpublished ruling. AFAIK, that means that the ruling has no precedence towards similar VFG'ed pistols in the 9th circuit.