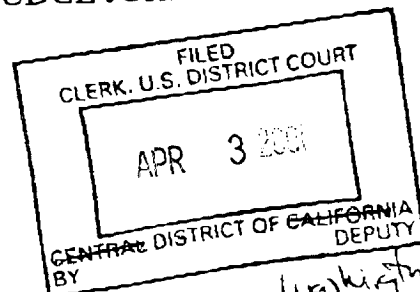


CHIEF JUDGE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

AHMED RESSAM,

Defendant.

NO. CR 99-666 C

MOTION AND MEMORANDUM OF
LAW IN SUPPORT OF DEFENDANT'S
MOTION FOR JUDGMENT OF
ACQUITTAL ON COUNT 5

NOW COMES the defendant, Ahmed Ressam, by undersigned counsel, and asks this Court to grant judgment of acquittal as to Count 5 of the indictment and to consider the following memorandum of law in support of his motion for judgment of acquittal pursuant to Fed. R. Crim. P. 29(a).

FACTS

Count 5 of the Second Superseding Indictment alleges:

(False Statement)

On or about December 14, 1999, at Port Angeles, within the Western District of Washington, in a matter within the jurisdiction of the United States Customs Service, an agency of the United States, AHMED RESSAM did knowingly and willfully make a false, fraudulent and fictitious material statement and representation; in that the defendant presented to U.S. Customs inspectors a Customs Declarations Form #6059B identifying himself as Benni Noris, whereas

MOTION AND MEMORANDUM OF LAW IN SUPPORT
DEFENDANT'S MOTION FOR JUDGMENT OF
ACQUITTAL ON COUNT 5 (AHMED RESSAM)

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1 in truth and fact, as he then well knew, this statement was false in that his true
2 name is AHMED RESSAM;
3 All in violation of Title 18, United States Code, Section 1001.

4 ARGUMENT

5 The defendant's Motion for Judgment of Acquittal on Count 5 must be granted because
6 the giving of a false name is neither within the jurisdiction of nor material to the United States
7 Customs Service within the meaning of 18 U.S.C. §1001. For a defendant to be convicted of
8 a false statement the government must prove that 1) the defendant made a false statement within
9 the jurisdiction of a government agency, 2) the defendant acted willfully, and 3) the statement
10 was material to the agency's activities or decisions. 9th Cir.Crim.Jury Instr. 8.66 (2000). A
11 material statement is one that has a "natural tendency" or capability of influencing an agency's
12 activities or decisions. See United States v. Carrier, 654 F.2d 559, 561 (9th Cir.1980) (outlining
13 the test for determining whether a false statement is material). There is no evidence that Mr.
14 Ressam's use of the name Benni Noris in any way affected or could have affected the operations
15 of the Customs Service. To the contrary, the Customs officials fulfilled their duties despite Mr.
16 Ressam's use of the name Benni Noris by searching Mr. Ressam's vehicle and seizing the
17 prohibited materials.

18 The defendant's false statements as to identity are material with respect to Count 3 of the
19 indictment where he made those false statements to an immigration officer in Victoria, British
20 Columbia, whose charge was to enforce the immigration laws. However the customs officers
21 at Port Angeles, Washington, who were not cross-designated as immigration officers, have a
22 different mission and as such the false statements as to identity with respect to Count 5 are not
23 material.

24 In general, the Customs Service was established to carry out certain functions of the
25 Treasury Department¹, namely the collection of duties on goods brought into the United States

26 ¹19 C.F.R. § 2071

1 See U.S. Const. art. I, § 8, cl. 1, 2. By regulation, Customs is specifically authorized to enforce
2 the laws of other agencies, but not those of the Immigration and Naturalization Service. 19
3 C.F.R. Part 161, Subpart A, §161.2. Section 161.2 authorizes Customs to enforce import and
4 export laws for the Bureau of Alcohol, Tobacco and Firearms and the Department of State
5 (arms, ammunition, other implements of war), the Drug Enforcement Administration (controlled
6 substances), the Office of Foreign Assets Control (goods associated with countries subject to
7 U.S. economic sanctions), the Nuclear Regulatory Commission (atomic materials and equipment
8 for production of atomic materials) and the Department of Commerce (all goods regulated by
9 that department). See id. All of these enforcement powers are related to preventing the illegal
10 importation or exportation of goods or materials, not persons. See id.

11 Upon entry into the United States, the regulations do require that a person in charge of
12 a vehicle "shall (A) report the arrival; and (B) present the vehicle, and all persons and
13 merchandise (including baggage) on board, for inspection; to the customs officer..." 19 U.S.C.
14 §1433. That section goes on to state that "The...person in charge of the vehicle...shall
15 present...to the Customs Service such information, data, documents, papers, or manifests as the
16 Secretary may by regulation prescribe." Id. Nowhere in Title 19 of the C.F.R. is there a
17 requirement that a person present their identification upon entering. There are, however,
18 regulations prescribing when persons are required to present identification. See e.g. 19 C.F.R.
19 §24.1 (payment for customs duties via various checks accepted only after payer produces
20 identification); 19 C.F.R. §201.25 (person wishing to view his or her Customs records must
21 produce "adequate identification"); 19 C.F.R. §206.17 (authorizing disclosure of confidential
22 business information during investigation by U.S. International Trade Commission to authorized
23 parties who apply for release along with "adequate personal identification"). Furthermore,
24 Customs has specifically addressed when it considers a person's true name to be material. See
25 19 C.F.R. Part 171, Appendix C §1641(d)(1)(A) (material facts in false statements in application
26 for Customs broker license include facts as to identity).

1 The Ninth Circuit has never specifically addressed the issue of whether a false name
2 placed on a 6059B form is material for purposes of 18 U.S.C. §1001. In general, Ninth Circuit
3 cases have involved false statements regarding goods or materials brought into the United
4 States. See e.g. Carrier, 654 F.2d at 560 (defendant falsely answered no to carrying over \$5000
5 in currency); United States v. Masters, 612 F.2d 1117 (9th Cir.1980) (defendant falsely answered
6 in the negative when asked if he carried more than the already reported \$9000 in currency and
7 failed to declare gems carried by female companion). The Eighth Circuit, however, has
8 addressed the issue in United States v. Popow, 821 F.2d 483 (8th Cir.1987). There, the defendant
9 attempted to enter the United States from Canada and placed a false name on a 6059B form. See
10 id. at 485. The defendant submitted the form to a Customs officer who was cross-designated as
11 an immigration officer. See id. Due to the cross-designation, the court found the false statement
12 was both within the jurisdiction of the I.N.S. and was material to the Customs Service. See id.
13 at 487-88; but see United States v. Parten, 462 F.2d 430 (5th Cir.1972) (no discussion of cross-
14 designation in finding that use of false names on 6095B forms material to Customs Service).

15 Because the Customs Service is not statutorily authorized to enforce immigration laws
16 and because it has otherwise designated when a true identity is material, the use of a false name
17 on a 6059B form is neither within the jurisdiction of nor material to that agency. Unlike the
18 officer in Popow, there was no evidence presented that the Customs officers in this case were
19 cross-designated as I.N.S. officers. Because the Customs officers were not charged with
20 enforcement of the immigration laws, the use of the name Benni Noris was not within Customs
21 jurisdiction and did not have the natural tendency to, or capability of, influencing that agency's
22 decision. This is evidenced by the fact that the agent searched Mr. Ressay's car based on

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MOTION AND MEMORANDUM OF LAW IN SUPPORT
DEFENDANT'S MOTION FOR JUDGMENT OF
ACQUITTAL ON COUNT 5 (AHMED RESSAM)

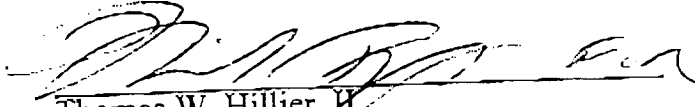
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1 criteria other than his name, found the prohibited materials, and seized them. Because the
2 statement is neither within the jurisdiction of nor material to the Customs Service, Count 5 must
3 be dismissed.

4 DATED this 3 day of April, 2001.

5 Respectfully submitted,

6 
7 Thomas W. Hillier, II
8 Federal Public Defender
9 Attorney for Ahmed Ressam

10 
11 Michael Filipovic
12 Assistant Federal Public Defender
13 Attorney for Ahmed Ressam

14 
15 Jo Ann Oliver
16 Assistant Federal Public Defender
17 Attorney for Ahmed Ressam
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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2001, I caused to be hand delivered a copy of
DEFENDANT'S MOTION AND MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL AS TO COUNT 5 and
proposed ORDER, to:

Francis J. Diskin
Chief Assistant U.S. Attorney

Andrew Hamilton
Assistant U.S. Attorney

Steven Gonzalez
Assistant U.S. Attorney

DATED this 3-1 day of April, 2001.


Michael Filipovic