

COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Mathews

No. 19-2029-cr, Court of Appeals for the Second Circuit (January 14, 2021)

SUMMARY

The Second Circuit affirmed Leonard Mathews' conviction for assault with a dangerous weapon in aid of racketeering, firearm offenses under § 924(c), and drug distribution. The court held that the district court did not plainly err in instructing the jury that VICAR assault with a dangerous weapon qualifies as a "crime of violence" under § 924(c)(3)(A), even after *United States v. Davis*, and found no clear error in denying a *Franks* hearing. A single, unemphasized reference to Mathews' request for counsel during trial testimony did not warrant reversal under *Doyle v. Ohio*, and the admission of a co-conspirator's statements under Rule 801(d)(2)(E) did not violate the Confrontation Clause.

CASE DETAILS

COURT	Court of Appeals for the Second Circuit
WRITING FOR THE COURT	per curiam; Dennis Jacobs; Rosemary S. Pooler; Raymond J. Lohier, Jr.
JURISDICTION	Federal
DECIDED	January 14, 2021
DOCKET	19-2029-cr
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Southern District of New York (Oetken, J.) following a jury trial and sentence.
STANDARD OF REVIEW	Plain error review for unpreserved claims (jury instruction, Doyle violation); clear error review for Franks hearing denial.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Leonard Mathews v. United States of America

TOPICS

- criminal procedure
- standard of review
- evidence
- fourth amendment
- appellate procedure

PRACTICE AREAS

- Criminal law

QUESTIONS PRESENTED

1. Whether the district court's jury instructions on the Section 924(c) count were erroneous and prejudicial.
2. Whether VICAR assault qualifies as a crime of violence under 18 U.S.C. § 924(c)(3)(A) after *United States v. Davis*.
3. Whether the district court erred in denying a Franks hearing regarding a cellphone search warrant.
4. Whether the prosecutor's elicitation of testimony that Mathews asked for a lawyer violated *Doyle v. Ohio*.
5. Whether the government improperly introduced hearsay in violation of the Confrontation Clause.
6. Whether the government violated its disclosure obligations by failing to produce statements from a non-testifying individual.

HOLDINGS

1. The district court did not plainly err. The instruction, viewed in full, clearly informed the jury about the underlying federal offense, and shorthand references to Count Three would not have misled the jury.
2. The district court did not plainly err in instructing that VICAR assault with a dangerous weapon constitutes a crime of violence, because the law was not clearly settled at the time.
3. The district court did not err. Mathews failed to make a substantial preliminary showing of deliberate falsehood or reckless disregard for the truth.
4. The testimony was improper, but the error did not require reversal because the government did not exploit the reference; it was a single, isolated reference not used for impeachment.
5. The statements were properly admitted as co-conspirator statements under Federal Rule of Evidence 801(d)(2)(E), and thus not subject to the Confrontation Clause.
6. No violation. The statements were part of public records, and defense counsel was aware of them.

KEY QUOTATIONS

“A magistrate’s determination of probable cause should be paid great deference by reviewing courts.” (at 3)

“The movant makes ‘allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations [are] accompanied by an offer of proof.’” (at 4)

FACTUAL BACKGROUND

Mathews was convicted for his role in a shooting. The charges included assault with a dangerous weapon in aid of racketeering, using a firearm during a crime of violence, possession of ammunition by a felon, and cocaine distribution. The jury convicted after a trial. The district court sentenced him to 204 months' imprisonment.

PROCEDURAL HISTORY

On October 3, 2018, Mathews was convicted following a jury trial of four counts: assault with a dangerous weapon in aid of racketeering, using and carrying a firearm during a crime of violence, possession of

ammunition by a felon, and distributing cocaine. On June 28, 2019, the district court sentenced him to 204 months' imprisonment. Mathews appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Sabhnani, 599 F.3d 215, 237 (2d Cir. 2010)
- United States v. Skelly, 442 F.3d 94, 99 (2d Cir. 2006)
- United States v. Marcus, 560 U.S. 258, 262 (2010)
- Johnson v. United States, 779 F.3d 125, 129-30 (2d Cir. 2015)
- United States v. Davis, 139 S. Ct. 2319 (2019)
- Johnson v. United States, 559 U.S. 133, 140 (2010)
- United States v. Castleman, 572 U.S. 157, 169 (2014)
- United States v. Walker, 442 F.3d 787, 788 (2d Cir. 2006)
- Singh v. Barr, 939 F.3d 457, 462 (2d Cir. 2019)
- Illinois v. Gates, 462 U.S. 213, 236 (1983)
- Franks v. Delaware, 438 U.S. 154, 171 (1978)
- United States v. Falso, 544 F.3d 110, 125 (2d Cir. 2008)
- United States v. One Parcel of Prop. Located at 15 Black Ledge Drive, 897 F.2d 97, 100 (2d Cir. 1990)
- Doyle v. Ohio, 426 U.S. 610, 618 (1976)
- Greer v. Miller, 483 U.S. 756, 764-69 (1987)
- Johnson v. United States, 520 U.S. 461, 465-66 (1997)
- United States v. Grubczak, 793 F.2d 458, 462 (2d Cir. 1986)
- United States v. Shyne, 617 F.3d 103, 108 (2d Cir. 2010)
- United States v. Payne, 63 F.3d 1200, 1208 (2d Cir. 1995)