

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

United States v. Don Allen Parker

604 F.2d 1327 (10th Cir. 1979) · No. No. 78-1002 · Decided August 30, 1979

SUMMARY

The Tenth Circuit reversed Don Allen Parker's convictions for assaulting a federal officer and possessing a firearm after a felony conviction. The court held that an Oklahoma deferred judgment did not constitute a prior conviction under 18 U.S.C. § 1202(a)(1), requiring dismissal of the weapons-possession charge, and that admission of evidence concerning the prior proceedings also required reversal of the assault conviction. The court further addressed the exclusion of evidence concerning the agents' conduct and the need for a more specific jury instruction concerning whether the agents were acting within the scope of their official duties.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Logan, Circuit Judge; Seth, Chief Judge; Holloway, Circuit Judge
JURISDICTION	Federal
DECIDED	August 30, 1979
DOCKET	No. 78-1002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Parker appealed jury convictions for assaulting a federal officer and possessing a firearm after a felony conviction.
STANDARD OF REVIEW	The admission or exclusion of evidence under Federal Rule of Evidence 403 is reviewed for abuse of discretion. The court separately considered whether the omission of a more specific jury instruction constituted plain error, but did not decide that issue because retrial was required.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Don Allen Parker v. United States of America

TOPICS

- criminal procedure
- evidence
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

criminal law

criminal procedure

evidence

firearms offenses

appellate procedure

QUESTIONS PRESENTED

1. Whether an Oklahoma deferred judgment and probation proceeding constituted a prior felony conviction under 18 U.S.C. App. § 1202(a)(1).
2. Whether admission of evidence concerning the Oklahoma proceeding improperly affected the assault conviction.
3. Whether the trial court abused its discretion by excluding evidence concerning the federal agents' conduct shortly after the assault.
4. Whether the jury instructions adequately explained that the agents had to be acting within the scope of their official duties rather than on a personal frolic.

HOLDINGS

1. An Oklahoma deferred judgment under the Oklahoma Deferred Judgment Act does not constitute a conviction within the meaning of 18 U.S.C. App. § 1202(a)(1), so Parker was improperly convicted on the firearm-possession count.
2. Admission of evidence of Parker's prior Oklahoma proceeding was improper, and because the evidence was heard by the jury, the assault conviction also had to be reversed.
3. The trial court did not abuse its discretion by excluding evidence that the agents allegedly drunkenly abused two witnesses after handcuffing them.
4. A more specific instruction explaining that the agents had to be acting within the scope of their employment and not on a personal frolic would have been proper and desirable in the circumstances, but the court did not decide whether the omission was plain error.

KEY QUOTATIONS

"We held there that the state's determination whether proceedings in its courts constitute a "conviction" is to be followed by the federal courts." (604 F.2d at 1329)

"Improper admission of evidence of a prior crime or conviction, even in the face of other evidence amply supporting the verdict, constitutes plain error impinging upon the fundamental fairness of the trial itself." (604 F.2d at 1329)

"Balancing the probative value of such evidence against the danger it would prejudice and mislead the jury is entrusted to the discretion of the trial judge." (604 F.2d at 1330)

FACTUAL BACKGROUND

In the early morning of August 28, 1977, Parker initiated a fight with Bureau of Alcohol, Tobacco and Firearms agent Jerry W. Tate at a club near Lawton, Oklahoma. During the fight Parker fired a revolver, striking Tate twice and fellow agent Robert H. Valadez, Jr. once; the jury convicted Parker of assaulting Tate but acquitted

him of assaulting Valadez. The prosecution also introduced evidence that Parker had pleaded guilty to an Oklahoma assault-and-battery charge but was proceeding under Oklahoma's Deferred Judgment Act, without entry of a judgment of guilt.

PROCEDURAL HISTORY

A jury found Parker guilty of assaulting a federal officer while the officer was performing official duties and of possessing a firearm after having been convicted of a felony. The district court treated Parker's Oklahoma deferred judgment and probation proceeding as a prior conviction under 18 U.S.C. App. § 1202(a)(1). The Tenth Circuit reversed, directed dismissal of the weapons-possession charge, and remanded for further proceedings and retrial of the assault charge.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Dismiss the weapons-possession charge and conduct further proceedings consistent with the opinion, including retrial of the assault charge.

CASES CITED

- United States v. Stober, No. 77-1854 (10th Cir. Aug. 3, 1970) (opinion on rehearing en banc)
- United States v. Bass, 404 U.S. 336, 342-43, 92 S. Ct. 515, 30 L. Ed. 2d 488 (1971)
- United States v. Burkhardt, 458 F.2d 201 (10th Cir. 1972)
- United States v. Gilliland, 586 F.2d 1384 (10th Cir. 1978)
- Rigby v. Beech Aircraft Co., 548 F.2d 288, 293 (10th Cir. 1977)
- United States v. Reid, 517 F.2d 953 (2d Cir. 1975)
- United States v. Frizzi, 491 F.2d 1231 (1st Cir. 1974)
- United States v. Michalek, 464 F.2d 442 (8th Cir. 1972)
- United States v. Heliczner, 373 F.2d 241 (2d Cir.), cert. denied, 388 U.S. 917 (1967)
- United States v. Linn, 438 F.2d 456, 458 (10th Cir. 1971)