

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States v. Chicarelli

445 F.2d 1111 (3d Cir. 1971) · Decided July 1, 1971

SUMMARY

The United States Court of Appeals for the Third Circuit affirmed the convictions of Eugene Napolitano, Lawrence R. Greenhalgh, and James T. Greenhalgh for possessing goods stolen from interstate shipment. The court rejected claims concerning a government witness serving as a jury bailiff and the trial judge’s handling of the jury’s request to review testimony. It held that no reversible error or prejudice had been shown.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                   |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Third Circuit                                                                                                                                                                                              |
| WRITING FOR THE COURT | Van Dusen, Circuit Judge                                                                                                                                                                                                                          |
| JURISDICTION          | Federal                                                                                                                                                                                                                                           |
| DECIDED               | July 1, 1971                                                                                                                                                                                                                                      |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Defendants appealed their convictions and July 2, 1970 judgments and commitments after the United States District Court for the District of New Jersey denied their post-trial motions for judgments of acquittal or, alternatively, a new trial. |
| STANDARD OF REVIEW    | The court reviewed asserted trial errors for reversible error and reviewed the unpreserved challenge to the trial judge's jury statement under the plain-error standard of Federal Rule of Criminal Procedure 52(b).                              |
| PRECEDENTIAL VALUE    | Published federal appellate opinion; precedential                                                                                                                                                                                                 |
| PARTIES               | Eugene Napolitano, Lawrence R. Greenhalgh, James T. Greenhalgh v. United States                                                                                                                                                                   |

TOPICS

- criminal procedure
- jury instructions
- appellate procedure
- preservation of error
- standard of review

PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the appellants were entitled to a mistrial or new trial because a Government witness also acted as bailiff for the jury on two occasions.
2. Whether the trial court abused its discretion by declining to read requested testimony back to the jury and by informing the jury that it had to rely on its own recollection after defense counsel objected.
3. Whether the appellants could obtain a new trial based on the trial judge's statement attributing the refusal to read back testimony to defense counsel when the objection was first raised after the verdict.

## HOLDINGS

1. A Government witness's limited service as a jury bailiff did not require reversal where the witness's testimony was formal and noncentral, was not controverted, and the witness did not have continuous and intimate contact with the jury.
2. A trial judge has wide discretion to decide whether to read testimony back to a jury at its request, and the court did not abuse that discretion by refusing to read the requested testimony after defense counsel objected.
3. An objection to potentially curable language in a trial judge's statements to the jury, first made after the verdict, generally cannot support a new trial absent plain error affecting substantial rights.

## KEY QUOTATIONS

*"A defendant is entitled to a fair trial but not a perfect one."* (445 F.2d at 1113)

*"A trial judge has wide discretion in deciding whether or not to read back testimony to the jury at their request."* (445 F.2d at 1115)

*"A defendant may not sit idly by in the face of obvious error and later take advantage of a situation which by his inaction he has helped to create."* (445 F.2d at 1116)

## FACTUAL BACKGROUND

The appellants were charged with conspiring to possess, and possessing, goods stolen from interstate shipment, knowing the goods were stolen. Government witness William C. Ramoth, a deputy United States Marshal, had fingerprinted the defendants and identified the fingerprint cards but also served as bailiff for the jury on two occasions. During deliberations, the jury requested that portions of testimony be read back and asked for a rental slip that had not been admitted into evidence; after defense counsel objected, the judge told the jury it would have to rely on its own recollection.

## PROCEDURAL HISTORY

The defendants were tried before a jury on conspiracy and possession charges involving goods stolen from interstate shipment. James F. Wood was acquitted on both counts; the three appellants were acquitted on the

conspiracy count and convicted on the possession count. The Third Circuit consolidated the appeals and affirmed the judgments, finding no reversible error and concluding that the appellants received a fair trial.

#### DISPOSITION

affirmed

#### CASES CITED

- United States v. Laurelli, 293 F.2d 830 (3d Cir. 1961)
- United States v. Hohensee, 243 F.2d 367 (3d Cir. 1957)
- Bruton v. United States, 391 U.S. 123, 135 (1968)
- Lutwak v. United States, 344 U.S. 604, 619 (1953)
- Turner v. Louisiana, 379 U.S. 466 (1965)
- Jackson v. Beto, 388 F.2d 409 (5th Cir. 1968)
- Crawford v. Beto, 385 F.2d 156 (5th Cir. 1967)
- Shepherd v. Wingo, 414 F.2d 274 (6th Cir. 1969)
- United States v. DePalma, 414 F.2d 394, 396-397 (9th Cir. 1969)
- United States v. Jackson, 257 F.2d 41, 43 (3d Cir. 1958)
- United States v. Schor, 418 F.2d 26, 30-31 (2d Cir. 1969)
- United States v. Mancuso, 423 F.2d 23, 29-30 (5th Cir. 1970)
- Spriggs v. United States, 133 U.S. App. D.C. 76, 408 F.2d 1279 (1969)
- White v. United States, 394 F.2d 49, 55-56 (9th Cir. 1968)
- United States v. Barrow, 363 F.2d 62, 67 (3d Cir. 1966)
- United States v. Laverick, 348 F.2d 708, 714 (3d Cir. 1965)
- United States v. Provenzano, 334 F.2d 678, 690 (3d Cir. 1964), cert. denied, 379 U.S. 947 (1964)
- Wegman v. United States, 272 F.2d 31, 34-35 (8th Cir. 1959)
- United States v. Salas, 387 F.2d 121 (2d Cir. 1967), cert. denied, 393 U.S. 863 (1968)
- United States v. Grosso, 358 F.2d 154, 158 (3d Cir. 1966)
- United States v. Simon, 425 F.2d 796, 812-813 (2d Cir. 1970), cert. denied, 397 U.S. 1006 (1970)
- Turpin v. United States, 108 U.S. App. D.C. 274, 281 F.2d 637, 639 (1960)
- United States v. Manos, 340 F.2d 534, 540 (3d Cir. 1965)
- Maddox v. United States, 330 F.2d 1022, 1023 (5th Cir. 1964)
- Carroll v. United States, 326 F.2d 72, 84 (9th Cir. 1964)
- Daniel v. United States, 268 F.2d 849, 853 (5th Cir. 1959)
- United States v. Angelo, 153 F.2d 247, 251-252 (3d Cir. 1946)
- Hohensee v. United States, 243 F.2d 367, 372-373 (3d Cir. 1957), cert. denied, 353 U.S. 976 (1957)
- United States v. Bogish, 204 F.2d 507, 508 (3d Cir. 1953)
- Blodgett v. United States, 161 F.2d 47, 51-52 (8th Cir. 1947)

- Bland v. United States, 299 F.2d 105, 110 (5th Cir. 1962)
- United States v. Ross, 321 F.2d 61, 66 n.3 (2d Cir. 1963), cert. denied, 375 U.S. 894 (1963)

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