UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Wider

No. 17-997-cr, United States Court of Appeals for the Second Circuit (September 23, 2019)

SUMMARY

The Second Circuit affirmed a conviction for conspiracy to commit bank fraud under 18 U.S.C. §§ 1344 and 1349, arising from a mortgage fraud scheme involving inflated property prices. The court rejected the defendant's ineffective assistance of counsel claim for lack of prejudice, held that Speedy Trial Act claims were waived by failure to move for dismissal before trial, and found no merit in arguments regarding prosecutorial misconduct, Brady violations, sufficiency of the evidence, the Confrontation Clause, or the Ex Post Facto Clause. The conviction was supported by sufficient evidence that the defendant knowingly participated in a scheme to defraud federally insured financial institutions.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Jon O. Newman; José A. Cabranes; Gerard E. Lynch
JURISDICTION	Federal
DECIDED	September 23, 2019
DOCKET	17-997-cr
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Eastern District of New York (Arthur D. Spatt, Judge).
STANDARD OF REVIEW	Ineffective assistance: Strickland; Speedy Trial Act: waiver; Prosecutorial misconduct: substantial prejudice; Sufficiency of evidence: Jackson v. Virginia; Plain error for unpreserved issues.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Aaron Wider v. United States of America

TOPICS

criminal procedure | conspiracy | fraud | prosecutorial misconduct | speedy trial

PRACTICE AREAS

Criminal Law Banking Law

QUESTIONS PRESENTED

1. Whether Wider received ineffective assistance of counsel due to his attorney's concurrent representation of a co-defendant during a status conference.
2. Whether Wider's rights under the Speedy Trial Act and the Sixth Amendment were violated.
3. Whether prosecutorial misconduct or Brady violations occurred.
4. Whether the evidence was sufficient to support the conviction.
5. Whether the conviction and sentence violated the Ex Post Facto Clause.

HOLDINGS

1. Even assuming counsel's representation was objectively unreasonable, Wider suffered no prejudice because the co-defendants agreed to the delay and the trial would not have been held earlier.
2. Wider waived any Speedy Trial Act claim by failing to move to dismiss the indictment prior to trial.
3. The constitutional speedy trial claim fails because the 60-day delay was reasonable, Wider did not object, and no prejudice resulted.
4. Wider's arguments regarding prosecutorial misconduct and Brady violations are meritless; no misconduct or suppression of exculpatory evidence occurred.
5. The evidence was sufficient for any rational trier of fact to find Wider guilty of conspiracy to commit bank fraud.
6. Wider's Ex Post Facto challenge fails because the victim banks (except Nomura) were FDIC-insured, and the 2007 Sentencing Guidelines were properly applied as they were less severe.

KEY QUOTATIONS

> *"A defendant's conviction may be vacated if prosecutorial misconduct caused substantial prejudice implicating the right to due process."*

> *"The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued."*

> *"A single conspiracy may have several purposes, but if one of them—whether primary or secondary—be the violation of a federal law, the conspiracy is unlawful under federal law."*

> *"Evidence is not 'suppressed' if the defendant either knew, or should have known, of the essential facts permitting him to take advantage of any exculpatory evidence."*

> *"A reviewing court views the evidence in the light most favorable to the government, drawing all inferences in the government's favor."*

FACTUAL BACKGROUND

Between 2003 and 2008, Wider and his co-conspirators lied on mortgage applications by falsely inflating house prices to obtain fraudulent mortgages from victim financial institutions, which Wider's company HTFC Corporation would then sell to other financial institutions.

PROCEDURAL HISTORY

Wider was convicted after a jury trial of conspiracy to commit bank fraud under 18 U.S.C. §§ 1344 and 1349, and sentenced to 150 months' imprisonment. He appeals.

DISPOSITION

affirmed

CASES CITED

- United States v. Wellington, 417 F.3d 284 (2d Cir. 2005)
- United States v. Khedr, 343 F.3d 96 (2d Cir. 2003)
- Strickland v. Washington, 466 U.S. 668 (1984)
- 18 U.S.C. § 3161(h)(6)
- United States v. Abad, 514 F.3d 271 (2d Cir. 2008)
- United States v. Black, 918 F.3d 243 (2d Cir. 2019)
- Barker v. Wingo, 407 U.S. 514 (1972)
- United States v. Fell, 531 F.3d 197 (2d Cir. 2008)
- Banks v. Dretke, 540 U.S. 668 (2004)
- Jackson v. Virginia, 443 U.S. 307 (1979)
- United States v. Sabhnani, 599 F.3d 215 (2d Cir. 2010)
- United States v. Guadagna, 183 F.3d 122 (2d Cir. 1999)
- United States v. Crisci, 273 F.3d 235 (2d Cir. 2001)
- Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005)
- DiSimone v. Phillips, 461 F.3d 181 (2d Cir. 2006)
- Anderson v. United States, 417 U.S. 211 (1974)
- Crawford v. Washington, 541 U.S. 36 (2004)
- Melendez-Diaz v. Massachusetts, 557 U.S. 305 (2009)
- United States v. Kilkenny, 493 F.3d 122 (2d Cir. 2007)