

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States v. Lopez

44 V.I. 311 (3d Cir. 2001) (3d Cir. 2001) · No. Nos. 00-1812, 00-1848, 00-1888, 00-1938, and 00-1992 ·
Decided October 24, 2001

SUMMARY

The United States Court of Appeals for the Third Circuit affirmed the convictions of four defendants arising from a series of home invasions, assaults, robbery, and murder in St. Croix, Virgin Islands. The court held, as a matter of first impression, that Pinkerton co-conspirator liability applies to crimes prosecuted under Virgin Islands law. It also rejected challenges concerning evidentiary rulings, expert-witness disclosure, eyewitness identification, jurisdiction, and sufficiency of the evidence.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Rendell, Circuit Judge; McKee, Circuit Judge; Barry, Circuit Judge
JURISDICTION	Federal
DECIDED	October 24, 2001
DOCKET	Nos. 00-1812, 00-1848, 00-1888, 00-1938, and 00-1992
DISPOSITION	affirmed
PROCEDURAL POSTURE	Four defendants appealed their convictions and sentences following a consolidated jury trial in the District Court of the Virgin Islands. They challenged, among other things, the application of Pinkerton liability to Virgin Islands offenses, evidentiary rulings, the sufficiency of the evidence supporting carjacking and firearm-possession convictions, the failure to question a juror about possible bias, and the handling of an alleged prosecutorial-misconduct claim.
STANDARD OF REVIEW	The court applied issue-specific standards, including abuse of discretion for evidentiary rulings and the district court's handling of possible juror bias, and review of sufficiency of the evidence to determine whether a rational jury could have found the challenged elements beyond a reasonable doubt, viewing the evidence in the light most favorable to the government. Discovery-sanctions decisions under Federal Rule of Criminal Procedure 16 were reviewed in light of prejudice and the district court's discretionary authority.

PRECEDENTIAL VALUE	precedential
PARTIES	Louis Lopez, Jr., Hernan Navarro, Juan Crispin, Delroy Josiah v. United States of America

TOPICS

criminal procedure evidence hearsay appellate procedure standard of review

PRACTICE AREAS

criminal law criminal procedure evidence appellate litigation Virgin Islands law

QUESTIONS PRESENTED

1. Whether Pinkerton vicarious coconspirator liability applies to offenses prosecuted under Virgin Islands law.
2. Whether a conspiracy must be charged in the indictment before the jury may be instructed on Pinkerton liability.
3. Whether the district court abused its discretion by admitting photographs of a victim's mutilated hand under Federal Rule of Evidence 403.
4. Whether the government violated Federal Rule of Criminal Procedure 16 by failing to timely provide a written summary and qualifications of an expert witness, and whether the violation required a new trial.
5. Whether testimony concerning a witness's prior identification made to police was admissible under Federal Rule of Evidence 801(d)(1)(C), or, if not, whether its admission was harmless.
6. Whether clothing and a firearm seized from a shared residence were relevant and not unfairly prejudicial under Federal Rules of Evidence 402 and 403.
7. Whether the evidence was sufficient to establish that the defendants took a vehicle from the person or presence of another for purposes of 18 U.S.C. § 2119.
8. Whether the evidence was sufficient to establish that Crispin constructively possessed a firearm under 14 V.I.C. § 2253(a).
9. Whether the district court abused its discretion by declining to question or remove a juror who complained that Navarro was staring at her.
10. Whether the district court erred by declining to hold a hearing concerning alleged prosecutorial misconduct in calling a witness who recanted a prior identification.

HOLDINGS

1. The Pinkerton doctrine applies in the Virgin Islands because it is a generally understood common-law rule, no local law contrary to it exists, and the Virgin Islands aiding-and-abetting statute does not displace coconspirator liability.

2. A conspiracy need not be charged in the indictment for Pinkerton liability to apply, provided the trial evidence establishes beyond a reasonable doubt that a conspiracy existed and that the substantive offense was committed in furtherance of it.
3. The district court did not abuse its discretion by admitting photographs of the victim's mutilated hand because the photographs were highly probative of the mayhem charge and were not shown to be unfairly prejudicial.
4. A violation of Rule 16 does not require a new trial absent a showing that the district court's response caused prejudice to the defendant or deprived the defendant of a fair trial.
5. A third person's testimony about a witness's prior statement identifying defendants as persons seen at a particular place and time after the crime may fall within Rule 801(d)(1)(C); in any event, admission of the testimony here was harmless because the evidence against the defendants was overwhelming.
6. The evidence was sufficient to support the carjacking convictions because the van was within the victim's reach, observation, or control, and was taken through force or intimidation with the requisite intent.
7. The evidence was sufficient for a rational jury to find that Crispin constructively possessed the firearm under 14 V.I.C. § 2253(a).
8. The district court did not abuse its discretion by declining to question or remove a juror who complained that Navarro was staring at her.

KEY QUOTATIONS

"Hence, we conclude that the Pinkerton doctrine does apply in the Virgin Islands." (at 479)

"In accordance with these holdings, we require a showing that the District Court's actions resulted in prejudice to the defendant." (at 484)

"Any concerns regarding conditions or circumstances that might bear on reliability are matters going to the weight of the evidence, which can be addressed on cross-examination, and should not affect the admissibility of the statement." (at 486)

"Accordingly, but for Lake, I would conclude that the evidence here is not sufficient to establish that the vehicle was taken 'from the person or presence of another' as is required for a conviction under 18 U.S.C. § 2119." (at 494)

FACTUAL BACKGROUND

During a late-night crime spree in St. Croix, four masked men invaded three homes, assaulting and robbing several victims and killing Orlando Orta while seriously injuring Concepcion Garcia Orta. Evidence connecting the defendants to the crimes included eyewitness identifications, stolen property recovered from their residences, a fingerprint, a shoe print, clothing matching descriptions of the assailants, and ballistic evidence linking a firearm to the homicide scene. The defendants were convicted of numerous territorial and federal offenses, including carjacking and firearm offenses.

PROCEDURAL HISTORY

The defendants were charged in a twenty-two-count indictment and convicted after a consolidated jury trial of Virgin Islands and federal offenses, including murder, burglary, robbery, firearm offenses, assault, mayhem, carjacking, and related offenses. The district court denied their motions for new trials, and the defendants filed timely notices of appeal. The appeals were consolidated on January 26, 2001.

DISPOSITION

affirmed

CASES CITED

- Pinkerton v. United States, 328 U.S. 640, 647-48 (1946)
- United States v. Chairez, 33 F.3d 823, 825, 827 (7th Cir. 1994)
- Thomas v. United States, 748 A.2d 931, 934 (D.C. 2000)
- United States v. Koenig, 53 F. Supp. 2d 803, 808 (D.V.I. 1999)
- Gov't of the Virgin Islands v. Aquino, 378 F.2d 540, 552-53 (3d Cir. 1967)
- United States v. Balter, 91 F.3d 427, 442 (3d Cir. 1996)
- United States v. Long, 574 F.2d 761, 767 (3d Cir. 1978)
- United States v. Driggs, 823 F.2d 52, 54 (3d Cir. 1987)
- In re Air Crash Disaster Near New Orleans, 767 F.2d 1151, 1154 (5th Cir. 1985)
- United States v. Brady, 579 F.2d 1121, 1129 (9th Cir. 1978)
- United States v. Miller, 199 F.3d 416, 420 (7th Cir. 1999)
- United States v. Mendoza, 244 F.3d 1037, 1047 (9th Cir. 2001)
- United States v. Brink, 39 F.3d 419, 425-26 (3d Cir. 1994)
- United States v. Blackman, 66 F.3d 1572, 1578 (11th Cir. 1995)
- United States v. O'Malley, 796 F.2d 891, 899 (7th Cir. 1986)
- United States v. Jarrad, 754 F.2d 1451, 1456 (9th Cir. 1985)
- United States v. Adams, 252 F.3d 276, 281 (3d Cir. 2001)
- United States v. Lake, 150 F.3d 269, 272 (3d Cir. 1998)
- United States v. Xavier, 2 F.3d 1281, 1288-89 (3d Cir. 1993)
- United States v. Casper, 956 F.2d 416, 421 (3d Cir. 1992)
- United States v. Applewhaite, 195 F.3d 679, 685 (3d Cir. 1999)
- Holloway v. United States, 526 U.S. 1, 8 (1999)
- United States v. Blackston, 940 F.2d 877, 883 (3d Cir. 1991)
- United States v. Iafelice, 978 F.2d 92, 97 (3d Cir. 1992)
- United States v. McKie, 112 F.3d 626 (3d Cir. 1997)
- United States v. Murray, 103 F.3d 310, 322-23 (3d Cir. 1997)
- Gov't of the Virgin Islands v. Dowling, 814 F.2d 134, 135-41 (3d Cir. 1987)
- United States v. Hursh, 217 F.3d 761, 768-69 (9th Cir. 2000)

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