

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Rivera-Ortiz

No. 19-1100, United States Court of Appeals for the First Circuit (September 21, 2021)

SUMMARY

The First Circuit affirmed convictions for false statements under 18 U.S.C. § 1001, theft of government property under 18 U.S.C. § 641, and failure to disclose under 42 U.S.C. § 408(a)(4), holding that sufficient evidence supported the jury's finding that the defendant knowingly concealed union work and volunteer activities on benefits forms. The court upheld the exclusion of evidence that government agencies failed to prevent the fraud, as its probative value was substantially outweighed by the risk of juror confusion under Federal Rule of Evidence 403. For sentencing, the loss calculation under U.S.S.G. § 2B1.1 using total benefits paid was reasonable, with the defendant failing to meet his burden to show legitimate portions, and restitution under the Mandatory Victims Restitution Act was properly limited to actual losses supported by the record.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Lipez, Circuit Judge; Howard, Chief Judge; Thompson, Circuit Judge
JURISDICTION	Federal
DECIDED	September 21, 2021
DOCKET	19-1100
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Puerto Rico. Jury conviction on five counts; defendant appeals.
STANDARD OF REVIEW	Sufficiency of evidence: de novo. Motion in limine: abuse of discretion. Loss calculation: de novo for interpretation, clear error for fact. Restitution: abuse of discretion.
PRECEDENTIAL VALUE	Published
PARTIES	Ricardo Rivera-Ortiz v. United States

TOPICS

- criminal procedure
- sentencing
- evidence
- appellate procedure
- standard of review

PRACTICE AREAS

Criminal Law

Fraud

Sentencing

Appeals

QUESTIONS PRESENTED

1. Whether there was sufficient evidence to support the convictions on all five counts.
2. Whether the district court abused its discretion in granting the government's motion in limine to exclude evidence of agency fault.
3. Whether the district court erred in the loss calculation under the Sentencing Guidelines.
4. Whether the restitution amount was proper.

HOLDINGS

1. The evidence was sufficient to support the convictions on all five counts. The jury could infer knowledge from Rivera's experience and warnings, and materiality was established because reporting work activity could affect benefits.
2. The district court did not abuse its discretion in granting the government's motion in limine to exclude evidence that USPS, OWCP, or SSA were at fault for failing to prevent the fraud.
3. The district court did not err in calculating the loss amount as the face value of all benefits paid, and the 14-point enhancement was proper.
4. The restitution amount of \$4,139.80 to SSA was proper, and the district court did not abuse its discretion.

KEY QUOTATIONS

"SEVERE PENALTIES MAY BE APPLIED FOR FAILURE TO REPORT ALL WORK ACTIVITIES THOROUGHLY AND COMPLETELY." (at 13)

"A reasonable jury could infer, based on Rivera's extensive experience and these repeated warnings, that he knew he had to disclose his work and volunteer activities but chose not to." (at 13)

"the district court may use the face value of the claims as a starting point in computing loss." (at 22)

"the district court could conclude that the total amount of SSDI benefits paid during the relevant period amounted to SSA's actual loss." (at 28)

FACTUAL BACKGROUND

Rivera, a USPS mechanic, was injured in 2005 and began receiving OWCP and SSDI benefits. He was required to file forms disclosing work and volunteer activities. He did not disclose his union work with the APWU, and continued to receive benefits. The OIG investigated and found that Rivera had worked for the union, received payments and reimbursements, and helped employees. He filed false CA-1032 forms and failed to report work to SSA.

PROCEDURAL HISTORY

Rivera was indicted on August 30, 2013, for three counts of false statements under 18 U.S.C. § 1001, one count of theft of government property under 18 U.S.C. § 641, and one count of failure to disclose under 42 U.S.C. § 408(a)(4). After a jury trial, he was convicted on all counts. He was sentenced to three years of probation and ordered to pay restitution of \$4,139.80. He appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Paz-Alvarez, 799 F.3d 12 (1st Cir. 2015)
- United States v. Ayala-Vazquez, 751 F.3d 1 (1st Cir. 2014)
- United States v. Peña-Santo, 809 F.3d 686 (1st Cir. 2015)
- United States v. Dudley, 804 F.3d 506 (1st Cir. 2015)
- United States v. Maldonado–García, 446 F.3d 227 (1st Cir. 2006)
- United States v. Pena, 586 F.3d 105 (1st Cir. 2009)
- United States v. Castro-Lara, 970 F.2d 976 (1st Cir. 1992)
- United States v. Vázquez-Soto, 939 F.3d 365 (1st Cir. 2019)
- United States v. Troisi, 849 F.3d 490 (1st Cir. 2017)
- United States v. Chen, 998 F.3d 1 (1st Cir. 2021)
- United States v. Phillipos, 849 F.3d 464 (1st Cir. 2017)
- United States v. Donato-Morales, 382 F.3d 42 (1st Cir. 2004)
- United States v. Phythian, 529 F.3d 807 (8th Cir. 2008)
- Torres-Arroyo v. Rullán, 436 F.3d 1 (1st Cir. 2006)
- United States v. Schneider, 111 F.3d 197 (1st Cir. 1997)
- United States v. Varoudakis, 233 F.3d 113 (1st Cir. 2000)
- United States v. Tavares, 705 F.3d 4 (1st Cir. 2013)
- United States v. Cortés–Cabán, 691 F.3d 1 (1st Cir. 2012)
- United States v. Alphas, 785 F.3d 775 (1st Cir. 2015)
- United States v. Arif, 897 F.3d 1 (1st Cir. 2018)
- United States v. Curran, 525 F.3d 74 (1st Cir. 2008)
- United States v. Cox, 851 F.3d 113 (1st Cir. 2017)
- United States v. Bennett, 37 F.3d 687 (1st Cir. 1994)
- United States v. Hensley, 91 F.3d 274 (1st Cir. 1996)
- United States v. González-Calderón, 920 F.3d 83 (1st Cir. 2019)
- United States v. Salas-Fernández, 620 F.3d 45 (1st Cir. 2010)
- United States v. Innarelli, 524 F.3d 286 (1st Cir. 2008)
- United States v. Cutter, 313 F.3d 1 (1st Cir. 2002)

- United States v. Naphaeng, 906 F.3d 173 (1st Cir. 2018)
- 2A Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 469 (4th ed. 2021)

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