

Commemorative Bob Dylan Issue*

CoConspirators and Other Strangers

Try explaining the Pinkerton Doctrine to a nonlawyer. Inevitably, the person will find it absurd and unfair.

The crimes of others may be attributed to a defendant even when the defendant did not participate in those crimes. see Pinkerton v. United States, 328 U.S. 640 (1946). A jury charge like that is often given in conspiracy trials.

Recently, in the series of trials known as the Uniontown cases, juries were faced with tens of Pinkerton counts in each case. To their credit, the juries took days to sort through the evidence in each case,

* "...can this really be the end, to be stuck inside of Mobile with the Memphis blues again?"

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Bob Dylan. Appearing at the Mobile Civic Center October 26, 1997.

and generally only convicted where they heard evidence of a defendant's direct participation in a particular transaction.

What juries do not know is that under the Sentencing Guidelines, one conviction is as good as ten in a drug case. Even juries that care enough to apportion blame fairly may feel compelled to convict on one or more counts, given the pressure of so many choices.

More confusing for lawyers and defendants, is that the measure of joint culpability at sentencing is different from liability at trial. At trial, a defendant may be liable for acts of coconspirators even if it was done without his knowledge. At sentencing, jointly undertaken criminal activity must have been "reasonably foreseeable" to the defendant to hold him responsible. U.S.S.G. §1B1.3.

Two persons may be tried together. One is convicted of 20 counts (1 conspiracy count, and 19 under Pinkerton), and the other is only convicted of conspiracy. However, the person convicted of the single conspiracy count may face many more years in custody because more drugs were found foreseeable to him than his codefendant. Go figure.

Reversible Errors

United States v. Nyemaster, 116 F.3d 827 (9th Cir. 1997) (Insufficient evidence of being under the influence of alcohol in a federal park).

United States v. Arteaga, 117 F.3d 388 (9th Cir. 1997) (Evidence that was precluded at trial could not support convictions on appeal).

United States v. Thomas, 116 F.3d 606 (2d Cir. 1997) (Juror should not have been dismissed when he did not admit to refusing to follow the law during deliberations).

United States v. Collins, 118 F.3d 1394 (9th Cir. 1997) (Illegal ex post facto application of rule allowing additional term of release after revocation).

United States v. Hall, 116 F.3d 1253 (8th Cir. 1997) (Exposure of jury to unrelated, but prejudicial matters, required new trial).

United States v. Kemmish, 120 F.3d 937 (9th Cir. 1997) (The defendant did not engage in a pattern of exploitation).

United States v. Sumner, 119 F.3d 658 (8th Cir. 1997) (When defendant denies the crime occurred, prior acts to prove intent are not admissible).

United States v.

Johnson, 121 F.3d 1141 (8th Cir. 1997) (Defendant did not get notice of upward departure).

United States v.

Cazares, 121 F.3d 1241 (9th Cir. 1997) (Plea to drug conspiracy was not an admission of an alleged overt act).

United States v. Dozier, 119 F.3d 239 (3d Cir. 1997) (Ex post facto application of additional term of supervised release).

United States v. Garzon, 119 F.3d 1446 (10th Cir. 1997) (1. Passenger did not abandon bag by leaving it on bus; 2. General warrantless search of all bus passengers by dog was illegal).

United States v.

McKinney, 120 F.3d 132 (8th Cir. 1997) (Firearm was not actively used during drug crime).

United States v. Aguilar-Ayala, 120 F.3d 176 (9th Cir. 1997) (Defendant was entitled to sentence reduction to mandatory minimum because of retroactive guideline amendment, regardless of whether safety valve applied).

United States v. Lis, 120 F.3d 28 (4th Cir. 1997) (A ledger connecting another to the crime was not hearsay).

United States v. Beydler, 120 F.3d 985 (9th Cir. 1997) (Unavailable witness incriminating the defendant was inadmissible hearsay).

United States v. Solono-Godines, 120 F.3d 957 (9th Cir. 1997) (A misrepresentation by the defendant did not obstruct justice).

United States v.

Nevarez-Castro, 120 F.3d 190 (9th Cir. 1997) (The court denied a competency hearing).

United States v. Cross, 121 F.3d 234 (6th Cir. 1997) (Torture was not relevant conduct in a drug case).

United States v.

Drapeau, 121 F.3d 344 (8th Cir. 1997) (Enhancement for assaulting a government official applicable only when official is victim of the offense).

United States v. Roberts,

119 F.3d 1006 (1st Cir. 1997) (Prosecutor commented on defendant's failure to testify and misstated burden of proof).

United States v. King,

119 F.3d 290 (4th Cir. 1997) (Possession of a firearm at home did not support using or carrying firearm during drug crime).

United States v.

Mendoza, 121 F.3d 510 (9th Cir. 1997) (District court had authority to give downward departure regarding drug purity and lack of control).

United States v.

Johnson, 120 F.3d 1107 (10th Cir. 1997) (Continuance violated Speedy Trial Act).

United States v. Logan,

121 F.3d 1172 (8th Cir. 1997) (Record did not support drug quantity or role adjustment).

United States v. Pierre,

120 F.3d 1153 (11th Cir. 1997) (Plea was involuntary when defendant mistakenly believed he had preserved appellate issue).

United States v. DePace,

120 F.3d 233 (11th Cir. 1997) (An upward departure without notice).

United States v.

Dieguimde, 119 F.3d 933 (11th Cir. 1997) (Order of deportation did not consider defendant's request for political asylum).

United States v. Cooper,

121 F.3d 130 (3d Cir. 1997) (Evidence did not support conviction for tampering with a witness).

United States v.

Robinson, 119 F.3d 1205 (5th Cir. 1997) (Asian-American merchants were not vulnerable victims).

United States v.

Khawaja, 118 F.3d 1454 (11th Cir. 1997) (The government is not a victim for purposes of awarding restitution).

United States v. Kubosh,

120 F.3d 47 (5th Cir. 1997) (Jury instruction failing to require active employment of firearm was plain error).

United States v.

Bordeaux, 121 F.3d 1187 (8th Cir. 1997) (Jury instruction in an abusive sexual contact case failed to require force).

United States v. Juvenile

Male PWM, 121 F.3d 382 (8th Cir. 1997) (1. Court imposed sentence beyond comparable guideline for adults; 2. Court considered pending unadjudicated charges).

United States v. Cain,

121 F.3d 385 (8th Cir. 1997) (Fraud committed prior to defendant's participation was not a basis for restitution).

United States v. Hogan,

121 F.3d 370 (8th Cir. 1997) (Victims must be targeted in order to be considered vulnerable).

United States v. Ramos-Oseguera,

120 F.3d 1028 (9th Cir. 1997) (1. Inventory of pants found in vehicle was illegal; 2. Defendant was forced to choose between testifying against her husband or contempt).

United States v. Palma-Ruedas,

121 F.3d 841 (3d Cir. 1997) (No venue in state where defendant neither used nor

carried the firearm).

United States v. Hicks,
122 F.3d 12 (7th Cir. 1997)
(Burglary of a building was not a
crime of violence for career
offender enhancement).

Seminar

On November 6 and 7,
1997, there will be a seminar on
the Federal Sentencing
Guidelines at the Pensacola
Civic Center.

The cost is \$125.00 for
preregistration and \$135.00 at
the door. Call Tom Keith, AFD,
NDFL for details. (904) 432-
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