

RECENT THIRD CIRCUIT AND SUPREME COURT CASES

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SUPREME COURT

I. Sixth Amendment and Pretrial Freezing of Untainted Assets

Luis v. United States, No. 14-419, 2016 U.S. LEXIS 2272 (U.S. Mar. 30, 2016).

The pretrial restraint/freezing of legitimate, untainted assets not traceable to a criminal offense needed for a criminal defendant to retain counsel of choice violates the Sixth Amendment.

NOTE: The majority opinion reached this conclusion by engaging in a balancing of the government's interests in the property against the defendant's right to counsel of her choice, and distinguished this case from those where defendants' assets were reasonably traceable to the crime. Justice Thomas concurred in the judgment, but opined that the Court's rule that a pretrial restraint of untainted assets violates the Sixth Amendment rests on the text of the Sixth Amendment itself and the common-law. Since this is the narrowest ground supporting the judgment, it appears to be the controlling one.

II. SORNA – Updating Sex Offender Registration When Moving Abroad

Nichols v. United States, No. 15-5238, 2016 U.S. LEXIS 2276 (U.S. Apr. 4, 2016).

42 U.S.C. § 16913(a) requires sex offenders to register, and keep registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. The offender must notify one of the “involved” jurisdictions, and that jurisdiction is then responsible for notifying the other jurisdictions.

Nichols holds that when a sex offender moves out of a particular state, that state is no longer an “involved” jurisdiction under § 16913 because he no longer “resides” there. This means that when Nichols moved from Kansas to the Philippines, Kansas was no longer an “involved” jurisdiction, and Nichols could not be convicted for failing to update his registration in Kansas under 18 U.S.C. § 2250(a)(3).

NOTE: The Court mentioned that Nichols' conduct would have been unlawful under a new statute passed by Congress criminalizing the “knowin[g] fail[ure] to provide information required by [SORNA] relating to intended travel in foreign commerce.” See Pub. L. 114-19, §6(b)(2), 130 Stat. 23, which will be codified at 18 U.S.C. § 2250(b). His conduct also violated Kansas state law. Therefore, the Court's holding was not inconsistent with SORNA's purpose of closing up sex offender registration loopholes around the nation.

III. Cert. Granted – Double Jeopardy Following Inconsistent Verdicts and Reversal

Bravo-Fernandez v. United States, No. 15-537 (Cert. Granted Mar. 28, 2016).

ISSUE: Whether the Double Jeopardy Clause bars retrial of a defendant where, following the jury’s return of an inconsistent verdict acquitting on some counts and convicting on another, the conviction is subsequently vacated for legal error?

IV. Cert. Granted – Evidentiary Rules and the Right to an Impartial Jury

Peña Rodriguez v. Colorado, No. 15-606 (Cert. Granted Apr. 4, 2016).

ISSUE: Whether an evidentiary rule prohibiting impeachment of the verdict by means of statements made during jury deliberations may constitutionally bar evidence of racial bias offered to prove a violation of the Sixth Amendment right to an impartial jury?

THIRD CIRCUIT

I. Rule 404(b) Evidence for “Background” / Duplicity and Unanimity Instructions

United States v. Steiner, No. 14-4628, --- F.3d ---, 2016 U.S. App. LEXIS 3984 (3d Cir. Mar. 3, 2016).

(1) The district court erred when it allowed the government to introduce evidence that Steiner was arrested on an outstanding warrant for failure to appear in a pending sexual assault case to “complete the story” of how Steiner came to police attention in the first place under Federal Rule of Evidence 404(b). The government’s contention was not true, because Steiner actually came to police attention when his landlord, a paid police informant, tipped off the police that he was a felon-in-possession of a disassembled shotgun and ammunition. The evidence was not needed to complete the story of the case because the facts of this constructive possession case were straightforward. Therefore, the evidence was not offered for a proper purpose under Rule 404(b). However, the error was harmless because the conduct underlying the warrant was not disclosed to the jury and because Steiner took the stand and admitted he was a convicted felon who committed crimes of dishonesty in the past.

The Court took care to explain that Rule 404(b) evidence offered to “complete the story” or for “background” is most often admitted in cases charging a conspiracy, where the government seeks to show an ongoing relationship between co-conspirators or a conspirator’s role in a complex scheme. However, the Court declined to limit the admissibility of background evidence to conspiracy cases and also declined to lay out precise contours for when background evidence can properly be admitted under Rule 404(b). But where the information needed to understand the story of the case is straightforward, the government may not force “extraneous and potentially prejudicial information into the record” and call it “background” as it did here.

(2) The allowable “unit of prosecution” in a felon-in-possession case is the “incident of possession,” regardless of whether the defendant possessed more than one firearm, or

possessed a firearm and ammunition together. Therefore, possession of multiple firearms does not necessarily give rise to a separate possession offense for each firearm possessed. Possession of multiple firearms can give rise to multiple offenses where they were seized in different locations or were acquired in separate transactions. Determining whether individual firearms or ammunition were simultaneously possessed is a fact-intensive inquiry that depends on the circumstances surrounding the defendant's conduct. Mere physical proximity of the firearms or ammunition does not demonstrate simultaneous possession.

Here, all the ammunition was stored at various places in Steiner's basement and there was nothing other than Steiner's testimony to suggest the ammunition was acquired at different times and for different purposes, or that it was separately stored in the home. Therefore, the indictment was not duplicitous, and the district court did not err when it refused to give a special unanimity instruction to the jury requiring them to unanimously find which type of ammunition he possessed.