RECENT THIRD CIRCUIT AND SUPREME COURT CASES

January 8, 2015
Christofer Bates, EDPA

SUPREME COURT

I. FED. R. EVID. 606(b) / Affidavit / Potential Juror Bias Not Disclosed in Voir Dire

Warger v. Shauers, No. 13-517, --- U.S. --- , 2014 WL 6885952 (Dec. 9, 2014).

Rule 606(b) of the Federal Rules of Evidence does not permit the introduction of an affidavit from one juror that alleges another juror lied in response to voir dire questions for the purpose of concealing a potential source of bias.

II. Fourth Amendment / Traffic Stop / Reasonable Suspicion / Mistake of Law

Heien v. North Carolina, 135 S. Ct. 530 (2014).

A reasonable suspicion can rest on a mistake of law, so long as the officer's mistaken understanding of a statute is objectively reasonable. In determining whether an officer's mistake of law was reasonable, the inquiry is not as forgiving as the standard for qualified immunity in civil rights cases, and the officer may not benefit from "a sloppy study of the laws he is duty-bound to enforce."

In this case, a police officer pulled over Heien's vehicle for having a faulty brake light. The officer found cocaine pursuant to a consent search and arrested both of the vehicle's occupants. A state court later construed the relevant North Carolina statute to require only a single working brake light. On this basis, Heien moved to suppress the cocaine, arguing that the officer had no reasonable suspicion to stop the vehicle.

The Supreme Court ruled the officer's mistake of law in this case was reasonable. North Carolina's statute addressing "stop lamps" referred to "other rear lamps." When the officer stopped Heien's vehicle, no appellate court had construed the statute, and it was reasonable for the officer to believe the broken brake light violated the statute.

NOTE: This decision adversely impacts pre-existing Third Circuit law that had previously been set forth in *United States v. Delfin-Colina*, 464 F.3d 392, 399-400 (3d Cir. 2006) and *United States v. Harrison*, 689 F.3d 301, 309 (3d Cir. 2012).

THIRD CIRCUIT

I. U.S.S.G. § 3B1.3 / Abuse of Trust

United States v. Babaria, --- F.3d ---, 2014 WL 7399043 (3d Cir. Dec. 31, 2014).

The Third Circuit upheld the district court's application of the two-level upward adjustment for abuse of trust under U.S.S.G. § 3B1.3 in this case, where the defendant was the medical director and manager of a Medicare and Medicaid provider (an MRI/CT scan/ultrasound testing center) who supervised the payment of kickbacks to doctors for patient referrals. Dr. Babaria, a licensed radiologist, was the individual who certified compliance with the anti-kickback statute on behalf of the company. He utilized his position to conceal the payment of kickbacks, which is an offense that is difficult to detect.

The Third Circuit also explained that the district court properly considered Dr. Babaria's medical license in its abuse of trust analysis, even though he did not need to be a licensed radiologist in order to be the company's manager. The Court explained there was a likelihood his professional training and license contributed to his ability to obtain his position and to supervise the company's activities as they related to Medicare and Medicaid. The enhancement was also proper even though all Dr. Babaria did was pay physicians for patient referrals for diagnostic testing. He did not falsify records, bill Medicare or Medicaid for unnecessary procedures, or otherwise compromise patient care.

The Court also upheld, with little analysis, the district court's application of the four level upward adjustment for playing an aggravating role and its consideration of the 18 U.S.C. § 3553(a) factors.

II. Ineffective Assistance of Counsel / Breach of Plea Agreement

United States v. Davenport, --- F.3d ---, 2014 WL 64698 (3d Cir. Jan. 6, 2015).

The government did not breach Davenport's plea agreement when it advocated for a two-level upward adjustment for possessing a firearm in connection with his conspiracy to distribute narcotics offense, even though the defendant and his attorney had stricken and initialed a joint recommendation regarding the U.S.S.G. § 2D1.1(b)(1) enhancement from the written agreement during plea negotiations. Despite the defense striking the firearm recommendation from the written agreement, the PSR recommended it and the district court applied it over Davenport's objection after hearing evidence from a DEA agent and another witness.

Reading the plea agreement as a whole, the government was clearly entitled to put the district court on notice of all relevant information and to respond to all of Davenport's objections. The government never agreed not to argue for the enhancement. Therefore, when the firearm clause was stricken from the agreement, it merely meant that the parties no longer jointly agreed on that specific sentencing recommendation. Since the government did not breach the plea agreement, Davenport's trial counsel was not ineffective for failing to make the argument. The district court properly denied Davenport relief under 28 U.S.C. § 2255.