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EVIDENCE

In re Grand Jury Proceedings v. United States, 857 F.2d 710

Company X appeals an order to compel the production of documents for grand jury use. The district court determined that the scope of the subpoenas and the *prima facie* evidence of attorney involvement in the alleged crime and fraud fell within the exception to the attorney-client privilege and did not need to be individually examined. The Court of Appeals upheld the lower court's findings since the purpose of the communication between Company X and Law Firm Y was to further a crime or an intended fraud.

United States v. Law Firm Z, 857 F.2d 707

The United States appeals that portion of the district court's order denying its motion to compel production of nonprivileged documents for use in its grand jury investigation.

The Tenth Circuit found the district court's failure to compel production of nonprivileged documents, because that court deemed the documents redundant, was insufficient to permit meaningful review. The portion of the district court's order relating to its failure to so compel was therefore vacated and remanded.

United States v. Ashby, 864 F.2d 690

Appellant appeals from a conviction of possession and aiding and abetting the possession of marijuana with intent to distribute. Her pre-trial motion to suppress certain evidence was denied and she was convicted. At the appellate level she made various claims of error, none of which warranted reversal.

The court stated that documents used by the prosecution were not hearsay and were relevant for the purpose for which they were introduced. The jury instructions were supported by sufficient evidence at trial and did not constitute an abuse of discretion, and evidence was sufficient to prove intent to distribute the marijuana. The conviction was affirmed.

Alexander v. United States, 849 F.2d 1293

Defendant Alexander appeals his conviction for mail and wire fraud under 18 U.S.C. §§ 1341 and 1343 on the grounds of prosecutorial misconduct and improper exclusion of evidence. The Court of Appeals held that (1) prosecutorial misconduct is prejudicial only when it influences the verdict (which the record here failed to show), and (2) evidentiary rulings are only reversible for abuse of discretion. Here, in view of the many conflicting reasons for settlements, evidence of prior settle-

ment of civil damages arising out of the same incident were properly excluded. Affirmed.

Agristor Leasing v. Meuli, 865 F.2d 1150

Appellant Meuli appeals an unfavorable jury verdict on the grounds the district court improperly excluded evidence of prior lawsuits against a manufacturer of grain silos, and did not offer reasons for dismissing other parties to the lawsuit. Affirmed.

The court of appeals held that the district court properly excluded Meuli's offer of proof, since it related to lawsuits against the manufacturer in California which took place in the 1960's. Noting that the lawsuits involved a different product and a large gap in time, the court agreed that evidence concerning them would likely serve only to confuse a jury. The court also held that since Meuli never objected to the dismissal of the other parties, they waived their right to raise this issue on appeal.

United States v. Guzman, 864 F.2d 1512

Appellant United States appeals the district court's granting of a motion to suppress evidence discovered in the course of a traffic stop. Affirmed.

A New Mexico State Police Officer pulled over Guzman, who was driving a rented 1987 Cadillac with Florida plates, for not wearing his seatbelt. Guzman's driver license and registration were in order, but the officer persisted in his questioning of Guzman, and finally obtained a consent to search from him. Upon searching the car, \$40,000 in cash and five kilograms of cocaine were seized.

The court of appeals held that the proper test for determining whether a traffic stop is valid is whether a reasonable officer in the same circumstances would have made the stop. In this instance, the court held that the stop was merely a pretextual one, and that insufficient probable cause existed to justify the actions taken by the police officer.

United States v. Cuch, 842 F.2d 1173

Appellant Cuch appeals his conviction of sexual assault and illegal possession of a firearm. Affirmed.

Appellant appeals on the grounds the district court improperly admitted evidence of a prior sexual assault. The court of appeals held that this evidence was properly admitted under FRE 404(b), because evidence had real probative value, was established with clear and convincing evidence, was not about acts unduly remote in time, and all the procedural safeguards for the admission of this kind of evidence were followed.

Willner v. University of Kansas, 848 F.2d 1020

On appeal from a judgment for defendant-appellee in a sex discrimination action. Affirmed.

The panel found that the district court did not abuse its discretion in denying the recusal motions because the motions failed to allege sufficient facts, involved adverse rulings, or were untimely. Upon review of the record, the panel upheld the district court's findings that the appellant wilfully disregarded the court's orders to cooperate in the discovery process. Thus, dismissal of plaintiff's claims against the individual defendants prior to trial was not error. Finally, the panel concluded that the thoroughness of the court's findings and extensive discussion of the evidence shows that the court carefully considered the entire record. The district court's findings were not clearly erroneous.

Big Horn Coal Company v. Commonwealth Edison Co., 852 F.2d 1259

This breach of contract case involved an Illinois public utility (Edison), and two Wyoming coal producers. Edison notified coal companies that it was exercising section 3.01, a force majeure clause, to reduce its scheduled minimum purchase obligations (amounting to 1.5 million tons of coal per year for a ten-year period) in order to comply with an Illinois EPA order. The coal companies brought this suit. Edison appeals a jury verdict totalling more than \$500 million rendered against it in the district court.

This appeal explores the good faith doctrine of contract law in some depth, although "good faith" is never defined. The judgment is upheld as the Tenth Circuit found no error in the instructions given by the district court.

United States v. Markopoulos, 848 F.2d 1036

Defendant was convicted of conspiracy to distribute marijuana. On appeal, Markopoulos challenged the admissibility of several items of evidence, and claims the trial court erred in failing to limit certain jury instructions to his co-defendant. He also contends the evidence at trial was insufficient to support his conviction. The Tenth Circuit held that none of the issues constituted reversible error and the evidence supported the conviction.

The court affirmed the district court holding that a co-defendant's statements are admissible under the sixth amendment if the court excludes all references to defendant and instructs the jury that the statement is not admissible against defendant. Admission of codefendant's statements were only "inferentially incriminating."

The court found that the jury instructions had been erroneous with respect to defendant, but did not believe they required reversal. Defendant was convicted only on the conspiracy charge and this conviction could not have been based on the evidence of the codefendant's prior acts.

United States v. Pinto, 838 F.2d 426

Appeal from conviction for conspiring to defraud the United States and falsifying tax returns. Affirmed.

Pinto and her husband concealed \$150,000 in income from selling marijuana. They used cash to purchase three residences and then obtained false mortgages to make it appear that the purchase money had come from loans. The court rejected defendant's claim that the evidence was insufficient to support a conviction. From witness' testimony and inferences drawn therefrom, the evidence was sufficient to support the jury's finding of Pinto's intent to conspire. The lower court admitted co-conspirator hearsay before finding the existence of a conspiracy, but, if admitted as such, it was conditionally admissible subject to being connected to the conspiracy and, therefore, it was not improper to admit it. This hearsay was also admissible because it was an admission by the co-conspirator.

Pinto also claimed that the evidence adduced at trial varied too greatly from the actual charges in that it indicated the existence of an uncharged conspiracy to possess, sell, and distribute drugs. Even though Pinto was not charged with this crime, the court found that the defendant could have anticipated this evidence at trial based on the actual charges, and therefore, her claim was meritless. The lower court's denial of Pinto's motion to sever the trial was proper based on judicial economy, avoidance of duplicitous trials, the court's continuous admonitions, and the general rule to jointly try individuals jointly indicted. Finally, charges were filed within the six-year statute of limitations because the object of the conspiracy did not end with the filing of the tax return.

United States v. Temple, 862 F.2d 821

Temple appeals the district court's decision to admit evidence offered under Fed. R. Evid. 404(b) concerning prior acts of the defendant. Reversed and remanded.

Defendant was convicted of conspiracy and aiding and abetting the smuggling of illegal aliens from Mexico into the United States. Prior to trial, the defendant moved to exclude government evidence of three prior acts which were of the same nature as the charge at bar. The district court denied the defendant's motion in limine and admitted the evidence. When reviewing evidentiary rulings of the trial court, this court may only reverse upon a finding of abuse of discretion. This court found the first prior act properly admissible under Rule 404(b) in order to show the defendant's common plan, preparation, and intent to transport aliens. The other two prior acts were deemed inadmissible, however, since Rule 404(b) excludes evidence of a person's character "for the purpose of proving action in conformity therewith." The government failed to show that these two prior acts fell within an exception

under Rule 404(b). The probative value of this evidence was substantially outweighed by the danger of unfair prejudice.

