

United States Court of Appeals For the First Circuit

No. 19-2046

UNITED STATES OF AMERICA,

Appellee,

v.

NOEL DE LEON-DE LA ROSA,

Defendant, Appellant.

No. 19-2067

UNITED STATES OF AMERICA,

Appellee,

v.

JUAN BATISTA JOHNSON-DEBEL,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Gustavo A. Gelpí, Jr., U.S. District Judge]

Before

Kayatta and Barron, Circuit Judges,
and O'Toole,* District Judge.

* Of the District of Massachusetts, sitting by designation.

Fernando O. Zambrana-Avilés, with whom Colon Serrano Zambrana, LLC was on brief, for appellant Noel de Leon-De la Rosa.

Kendys Pimentel-Soto, with whom Kendys Pimentel-Soto Law Office LLC was on brief, for appellant Juan Batista Johnson-Debel.

Mariana E. Bauzá-Almonte, Chief Appellate Division Attorney for the Department of Justice, with whom Gregory B. Conner, Assistant United States Attorney, and W. Stephen Muldrow, United States Attorney were on brief, for appellee.

November 2, 2021

BARRON, Circuit Judge. Noel de Leon-De la Rosa ("De Leon") and Juan Batista Johnson-Debel ("Johnson") challenge their respective federal convictions in the District of Puerto Rico, as well as the resulting sentences. Those convictions are for destruction of a controlled substance while on a vessel, and conspiracy to destroy a controlled substance while on a vessel. Their prosecutions followed their indictment for these offenses -- as well as for others for which they also were convicted but that are not at issue here -- after U.S. Customs and Border Patrol ("CBP") agents in April 2017 interdicted off the coast of Puerto Rico the small boat that De Leon and Johnson were on at the time. We vacate the convictions that Johnson and De Leon each challenge, though we vacate Johnson's for different reasons than those that lead us to vacate De Leon's.

I.

A.

The following facts are not in dispute. On the night of April 20, 2017, De Leon and Johnson were on a small boat about thirty miles off the northern coast of Puerto Rico, traveling southeast. The boat had no running lights.

At around 9:00 p.m., a CBP agent patrolling those waters by airplane detected the boat on the plane's forward-looking infrared camera. Suspecting drug smuggling, the agent called the

Coast Guard and the CPB's marine interdiction unit was dispatched to the boat's location.

The unit interdicted the boat just before midnight. After boarding the vessel, members of the unit determined that there was no contraband on board. CBP agents from the unit then detained Johnson and De Leon and brought the two of them -- along with the boat -- to the CBP facility in San Juan, Puerto Rico.

Once onshore at the CBP facility, at around 2:00 a.m., Johnson was interviewed by Francisco Calderón, an agent with U.S. Homeland Security Investigations. Calderón read Johnson the warnings required under Miranda v. Arizona, 384 U.S. 436 (1966),¹ and Johnson then answered questions that Calderón put to him about what had transpired aboard the boat. Johnson had also been interviewed immediately after the interdiction by Agent Miguel Borges.

The following morning, CBP Canine Enforcement Officer Adriel Castillo brought Honzo, a drug-detection dog, to inspect the boat. As Castillo walked the dog around the boat, Honzo "alerted" to the "[p]ossible contamination of narcotics."

That same day, Maritime Law Enforcement Specialist Matthew Tommie from the U.S. Coast Guard used a machine called an

¹ Johnson filed a motion to suppress his statements below but has not renewed any Miranda claims on appeal.

Ionscan 400B to test swabs taken from the vessel. The scan revealed no trace residue of narcotics.

B.

Johnson and De Leon were indicted in the District of Puerto Rico on May 18, 2017, in an eight-count indictment. The indictment set forth the following charges against each defendant:

Count One[:] Possession with the intent to distribute a controlled substance on board a vessel subject to the jurisdiction of the United States, aiding and abetting . . . in violation of [46 U.S.C. § 70503(a)(1) and 18 U.S.C. § 2].

Count Two[:] Conspiracy to possess with the intent to distribute a controlled substance on board a vessel subject to the jurisdiction of the United States . . . in violation of [46 U.S.C. §§ 70503(a)(1), 70506(b)].

Count Three[:] Possession with the intent to distribute a controlled substance . . . in violation of [21 U.S.C. § 841 and 18 U.S.C. § 2].

Count Four[:] Conspiracy to possess with the intent to distribute a controlled substance . . . in violation of [21 U.S.C. §§ 841, 846].

Count Five[:] Conspiracy to destroy property subject to forfeiture under [s]ection 511(a) of the Comprehensive Drug Abuse Prevention Act of 1970 . . . that is [a] . . . controlled substance [while on a vessel]. . . in violation of [21 U.S.C. § 881(a) and 46 U.S.C. §§ 70503(a)(2), 70504(b)(1), 70506(d)].

Count Six[:] Destruction of property subject to forfeiture under [s]ection 511(a) of the Comprehensive Drug Abuse Prevention Act of 1970 . . . that is . . . [a] controlled substance [while on a vessel] . . . in violation of [21 U.S.C. § 881(a), 46 U.S.C. §§ 70503(a)(2), 70504(b)(1), 70506(d), and 18 U.S.C. § 2].

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