CASE NO. 22-4499

IN THE
United States Court of Appeals
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff - Appellee,

v.

DAVID DARNELL WHITEHEAD,
Defendant - Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
AT WILMINGTON

OPENING BRIEF OF APPELLANT

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TABLE OF CONTENTS

PAGE

TABLE OF CASES AND AUTHORITIES

CASES:

STATUTES:

STATUTES: (continued)

STATEMENT OF SUBJECT MATTER AND APPELLATE JURISDICTION

A. Basis for Subject Matter Jurisdiction in the District Court

David Darnell Whitehead was charged in a 42 count Indictment along with two others with conspiracy to commit alien smuggling, smuggling aliens and aiding and abetting, money laundering and aiding and abetting, and various other related charges. He was convicted in Count 1 of conspiracy to commit alien smuggling in violation of 8 U.S.C. § 1324(a)(1)(A)(v)(I), (A-1-2); in Counts 17 and 18 of smuggling aliens and aiding and abetting in violation of 8 U.S.C. § 1324(a)(1)(A)(i) and 18 U.S.C. § 2, (A-1, A-4); and in Counts 36, 37, and 40 with money laundering and aiding and abetting, in violation of 18 U.S.C. § 1956(a)(2)(A), and 18 U.S.C. § 2. (A-3, A-4). The district court therefore exercised jurisdiction in this matter pursuant to Title 18 U.S.C. § 3231.

B. Basis for Jurisdiction in the Court of Appeals

This court has jurisdiction over appeals from final judgments of the district court pursuant to Title 28 U.S.C. § 1291. A judgment of conviction in a federal criminal case is a final order subject to appeal

under Title 18 U.S.C. § 3742, Title 28 U.S.C. § 1291 and Rule 4 of the Federal Rules of Appellate Procedure.

The district court entered the judgment from which this appeal originates on August 23, 2022. (JA324). The notice of appeal was filed on August 31, 2022. (JA331). A corrected judgment was entered on September 7, 2022. (JA333).[1]

[1] The offense ended date on page 2 of the original judgment erroneously listed the year as 2022. The corrected judgment entered the year 2020 on page 2 under the offense ended heading.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the district court erred in denying the Defendant's motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure for insufficiency of the evidence of conspiracy to commit alien smuggling as charged in Count 1 of the indictment.

2. Whether the district court erred in denying the Defendant's motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure for insufficiency of the evidence of smuggling aliens and aiding and abetting as charged in Counts 17 and 18 of the indictment.

3. Whether the district court erred in denying the Defendant's motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure for insufficiency of the evidence of money laundering and aiding and abetting as charged in Counts 36, 37, and 40 of the indictment.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

On October 28, 2020, David Darnell Whitehead was charged along with two other individuals in a 42 count indictment alleging conspiracies to commit various types of alien smuggling, smuggling aliens and aiding and abetting, transporting aliens for commercial advantage, concealing, harboring and shielding aliens from detection, forced labor, conspiracies to commit money laundering, and money laundering and aiding and abetting. The lead defendant was Mr. Whitehead's wife, Martha Jakeline Zelaya-Mejia (Martha), and the other co-defendant was Martha's brother Blas Antonio Celaya-Padilla (Blas). (JA16).

On November 16, 2021, Mr. Whitehead pled not guilty at his arraignment. On December 14, 2021 his attorney filed a motion to withdraw. (JA9). An order was entered granting the motion to withdraw as attorney on December 16, 2021. New counsel was appointed. (JA10).

On April 22, 2022, the Government filed a motion to dismiss Counts 2, 3, 19, 20, 21 and 22 of the indictment. (JA39). At a status conference hearing on April 26, 2022, the motion was granted. (JA11).

The case came on for trial at the May 31, 2022 term of court in Elizabeth City, North Carolina, the Honorable Terrence W. Boyle, District Court Judge, presiding. The case went to trial against David Whitehead only, on Counts 1, 4, 5, 17, 18, 26, 27, 36, 37, and 40. (JA45-46). At the conclusion of the case, the defense counsel filed a motion for judgment of acquittal under Rule 29 of the Federal Rules of Criminal Procedure. (JA245). The motion was allowed as to Counts 4, 5, 26, and 27, and was denied as to Counts 1, 17, 18, 36, 37, and 40. (JA250). Those counts were submitted to the jury on June 1, 2022. On said date, the jury found Mr. Whitehead guilty of all submitted counts. (JA283, 312-313).

The case came on for sentencing on August 23, 2022, before Judge Boyle. There were no objections to the final Presentence Report. (JA363). David Whitehead was sentenced to 21 months per count, concurrent, and to 1 year per count supervised release, concurrent. (JA322, 324).

Notice of appeal was filed on August 31, 2022. (JA331). A corrected judgment was entered on September 7, 2022. (JA333).

STATEMENT OF FACTS

On September 11, 2005 David Darnell Whitehead married Martha Zelaya-Mejia (hereinafter Martha), lead co-defendant in this case. They have five children. (JA355). This case involved a scheme by Martha to bring female aliens and their children from Honduras into the United States through Mexico. James Bryan Peterson, a defendant in a related case (JA343), was a farmer in Pender County, North Carolina, which is in the Eastern District of North Carolina. He purportedly gave Martha large sums of money to bring several women in from Honduras because he was looking for a wife. Martha had family contacts in Honduras that assisted in making arrangements to transport women through Mexico and across the border into the United States. Martha's brother, co-defendant Blas Antonio Celaya-Padilla (hereinafter Blas), was also involved and acted at times as a courier, sometimes referred to as a "mule" or "coyote". (JA173).

The scheme involved bringing several women into the United States from Honduras. They included Karen Menjivar, Alma Mendez,

Karen Ordonez, and a fourth women named Besay, who never reached the United States. Peterson testified that he paid Martha $12,000 to bring Karen Menjivar into the country (JA114), $20,000 to bring Alma Mendez into the country (JA121), and $20,000 to bring in Karen Ordonez. (JA123). It appears that Peterson was paying Martha to bring him a wife, whereas she was telling the women they were coming here to work for him. Peterson also paid Martha over $50,000 to bring in Besay, however she never made it into the country. (JA131-132).

The scheme unraveled on August 9, 2019 when Karen Ordonez placed a 911 call to the Pender County Sheriff's Department claiming she and her eight month old son were being held against their will at Peterson's house in Willard, North Carolina. Detective John Leatherwood and female Deputy Scott responded to the call. (JA57-58). Ms. Ordonez showed them marks on her where Peterson had tased her with a stun gun. (JA62-64). A search warrant was obtained, and stun guns, rope, bank transfers, cell phones, and texts were seized from Peterson's residence and vehicle. (JA67-62).

David Whitehead's alleged participation involved Karen Ordonez coming into the country. Ordonez testified that she and her son came to

the United States in a boat driven by smugglers. She walked until she was stopped by the Border Patrol. She met with Immigration authorities and they released her. She went to her uncle's house in Texas, and was there about one month. Martha then paid for her to fly from Texas to Boston, Massachusetts. (JA88-90). Martha and Peterson had driven to Boston because Martha was scheduled to have an abortion there. (JA184). All Peterson knew was that Martha was having a "female operation". (JA126). Peterson said he met Ordonez in Boston, but came back alone to North Carolina because Martha told him to leave. (JA126-127).

Martha testified that Peterson had to come back to North Carolina, so she called her husband to come from North Carolina to Boston to meet her and Ordonez. (JA185). Whitehead drove to Boston to pick them up. However he and Martha had an argument, and Whitehead left Boston and drove Ordonez back to Fayetteville, North Carolina. (JA94-96, 192). Peterson picked Ordonez and her son up at the Sheriff's Department in Fayetteville. (JA127).

The Government also offered evidence that David Whitehead assisted with wire transfers to bring women into the United States.

Martha testified that Ordonez and her little boy came in May or June of 2019 and that Whitehead was present and sent some wires. (JA181). It was explained that the same person could not send all of the money because it raised suspicion. (JA182). Homeland Security Agent Thomas Swivel offered evidence that David Whitehead sent wire transfers on May 17, 2019 and May 30, 2019. (JA230-232).

Further facts will be developed during the argument portion of the brief.

SUMMARY OF ARGUMENTS

I. While there appears to have been a conspiracy to smuggle undocumented immigrants into the United States, and that the Defendant's wife was the leader of that conspiracy, the Defendant contends that there was insufficient evidence that he joined in the conspiracy, or that he brought or attempted to bring to the United States a person at a place other than a designated port of entry, knowing that person was an alien. The evidence only shows that on one occasion he drove to Massachusetts to bring an immigrant and her son back to North Carolina at the request of his wife after a related defendant, James Petersen, left them in Massachusetts. He further

contends that the mere sending of wire transfers and MoneyGrams at the request of his wife is not sufficient to make him a member of the conspiracy.

II. The Defendant contends that there was insufficient evidence that he knowingly brought a person to the United States at a place other than a designated port of entry knowing that person was an alien as charged in Counts 17 and 18 of the indictment. The fact the alleged alien and her son had met with Immigration officials on two occasions, were allowed to travel to her uncle's home in Dallas, and were not prohibited from flying to Boston to meet the Defendant's wife and a related defendant does not provide sufficient evidence that Mr. Whitehead knew that the alien had arrived in the United States at a place other than a designated port of entry. Also, Defendant's lone trip to Massachusetts to bring the alleged alien and her son back to North Carolina appears to be more of a favor to his wife than participation in a conspiracy to commit alien smuggling.

III. The Defendant contends that the fact he assisted with sending wire transfers or MoneyGrams from North Carolina to a place outside the United States was insufficient to prove that he knowingly

intended to promote an unlawful activity, to wit: knowing that a person is an alien, bringing or attempting to bring such person to the United States at a place other than a designated port of entry. The fact his wife was from Honduras and had family and friends south of the United States border does not mean the Defendant knew of or joined in the unlawful activity. There are also legitimate reasons for a person to wire funds from the Untied States to a place outside of the United States.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE IN THAT THERE WAS INSUFFICIENT EVIDENCE THAT THE DEFENDANT KNOWINGLY CONSPIRED TO BRING A PERSON TO THE UNITED STATES AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY KNOWING THAT PERSON WAS AN ALIEN, AS CHARGED IN COUNT 1 OF THE INDICTMENT.

A. Standard of Review:

The Fourth Circuit reviews a challenge to the sufficiency of the evidence *de novo*, and will sustain the verdict if there is substantial evidence, viewed in the light most favorable to the government, to support it. United States v. Caldwell, 7 F. 4th 191, 209 (4th Cir. 2021). Substantial evidence is evidence that a reasonable finder of fact could

accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt. See United States v. Palomino-Coronado, 805 F. 3d 127, 130 (4th Cir. 2015), citing United States v. Alerre, 430 F. 3d 681, 693 (4th Cir. 2005).

B. Discussion:

Count 1 of the indictment charged David Whitehead with conspiracy to commit alien smuggling. 8 U.S.C. § 1324(a)(1(A)(v)(I) provides criminal penalties for any person who engages in any conspiracy to commit any of the preceding acts, to wit: bringing an alien to the United States at a place other than a designated port of entry [§ 1324(a)(1)(A)(i)], transporting an alien in violation of the law [§ 1324(a)(1)(A)(ii)], harboring an alien in violation of the law [§ 1324(a)(1)(A)(iii)], and inducing an alien in violation of the law [§ 1324(a)(1)(A)(iv)]. (A-1-2). In this particular case, the conspiracy alleged in Count 1 was to knowingly conspire to bring or attempt to bring to the United States a person at a place other than a designated port of entry, knowing that the person is an alien. (JA19).

It is undisputed that a conspiracy to smuggle undocumented immigrants existed. However, David Whitehead contends that there

was insufficient evidence that he was aware of or joined the conspiracy, that he knew the unlawful purpose of the plan and willfully joined in it, or that he brought to or attempted to bring to the United States a person at a place other than a designated port of entry, knowing that person was an alien. The evidence only shows that on one occasion he drove to Boston, Massachusetts to drive Karen Ordonez and her son to North Carolina because his wife was there for a medical procedure and Peterson had already returned to North Carolina without her. He also claims that while he sent some MoneyGrams to Mexico, there was insufficient evidence that he knew or was aware of the final purpose.

To establish an alien smuggling conspiracy, the Government must prove an agreement to carry out one of the substantive offenses, and that the defendant had the intent necessary to commit the underlying offense. United States v. Torralba-Mendia, 784 F. 3d 652, 663 (9th Cir. 2015). The Ninth Circuit also cited United States v. Shabani, 513 U.S. 10, 13, 115 S. Ct. 382, 384, 130 L. Ed. 2d 225 (1994), holding that conspiracies require an overt act only when explicitly stated in the statute's text. Torralba-Mendia's conviction was affirmed. The evidence showed that between 2007 and 2010 he transported suspected

illegal immigrants on multiple occasions, was seen at shuttle locations between twenty and twenty-five times, and engaged in counter-surveillance techniques to evade police. In the instant case, allegations of one transportation event and several MoneyGrams is significantly less than the evidence in Torralba-Mendia.

David Whitehead understands that a defendant challenging the sufficiency of the evidence to support his conviction faces a heavy burden. United States v. Dennis, 19 F. 4th 656, 665 (4th Cir. 2021), citing United States v. Bonner, 648 F. 3d 209, 213 (4th Cir. 2011). On the other hand, while the burden is heavy, it is not insurmountable. See United States v. Palomino-Coronado, *supra* at 130-132. In Palomino-Coronado, the defendant was charged with coercing a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct. Finding this was a specific intent offense, the Fourth Circuit reversed. It found that there was no direct evidence or statements indicating the defendant's intent of the sexual activity was for the purpose of producing a picture. It concluded that to hold otherwise would eliminate the specific intent requirement, turning the statute into a strict liability offense. 805 F. 3d at 132.

In United States v. Habegger, 370 F. 3d 441 (4th Cir. 2004), this Court also found that there was insufficient evidence of trafficking in counterfeit goods. Habegger was convicted of Count Two which alleged that he trafficked in and attempted to traffic in 12 pairs of counterfeit Eddie Bauer socks. However, the evidence showed that the socks were sent as samples and there was never an agreement to purchase; and therefore there was no *consideration* to satisfy the definition of "traffic" in the statute. The Fourth Circuit reversed his conviction.

David Whitehead contends that in the instant case there was insufficient evidence to show he conspired to commit alien smuggling. The evidence from Karen Ordonez is that while she was waiting at the border, she got in contact with her uncle who was able to receive her in Dallas, Texas. (JA87). She answered in the affirmative that when she crossed she went to a port of entry; however, upon further questioning she stated she came in a boat with smugglers. (JA87-88). She began walking, and was met by the border patrol, and was taken over to Immigration. They told her to present herself two days later, which she did. She was later allowed to go to her uncle's house, and stayed in

Texas for one month. (JA88-90). From there she and her son flew to Boston on a flight paid for by Peterson. (JA90).

Martha testified that after Ordonez had been in Texas about one month, she contacted Ordonez and told her it would be alright to stay there with her family. About a month later she was messaged by Ordonez that she wanted to come to North Carolina and work for Peterson. (JA183). That is when Martha and Peterson arranged for Ordonez and her son to fly to Boston, Massachusetts to meet them.

It is respectfully urged that the above scenario does not provide sufficient evidence that David Whitehead joined the conspiracy or had any knowledge that Karen Ordonez was illegally in the United States or that she had entered the United States at a place other than a designated port of entry. The evidence shows that she and her son had checked in with Immigration, were not arrested or detained, they resided in Texas with her uncle for some period of time, and then flew to Massachusetts. Because Peterson had returned to North Carolina, David Whitehead was asked to drive to Boston to bring Ms. Ordonez and her son back to North Carolina.

There is also insufficient evidence that Mr. Whitehead's sending some occasional MoneyGrams to Mexico showed his knowledge and intent to join the conspiracy. Martha testified that Mr. Whitehead knew her family was involved in bringing others into the country. She further testified that her brother, co-defendant Blas, as well as her father, stepmother, and cousins had been involved in the business. (JA173-174). Understanding that many immigrants, both legal and illegal, send money back home to family, the mere assistance in sending MoneyGrams is not sufficient to support the conspiracy allegations herein.

As previously noted, substantial evidence is evidence that a reasonable finder of fact could accept as adequate and sufficient to support a conclusion of a defendant's guilt beyond a reasonable doubt. United States v. Palomino-Coronado, *supra* at 130; United States v. Alerre, *supra* at 693. David Whitehead urges that, even in a light most favorable to the Government, there was insufficient evidence that he was aware of or joined the conspiracy, that he knew the unlawful purpose of the plan and willfully joined in it, or that he knowingly

brought or attempted to bring an alien to the United States at a place other than a designated port of entry.

For the foregoing reasons, the Defendant's Rule 29 motion for conspiracy to commit alien smuggling should have been allowed.

II. THE DISTRICT COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE IN THAT THERE WAS INSUFFICIENT EVIDENCE THAT THE DEFENDANT KNOWINGLY BROUGHT A PERSON TO THE UNITED STATES AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY KNOWING THAT PERSON WAS AN ALIEN, AS CHARGED IN COUNTS 17 AND 18 OF THE INDICTMENT.

A. Standard of Review:

See standard of review in Argument I.

B. Discussion:

Counts 17 and 18 of the indictment charged that on or about January, 2018 and continuing through the date of the indictment, David Whitehead did aid and abet smugglers known and unknown to the grand jury, to knowingly bring, and aid and abet to bring, to the United States K.N.O. and D.E.H., alien persons, with knowledge that said persons were aliens, at a place other than a designated port of

entry. (JA27-28). K.N.O. was Karen Ordonez, and D.E.H. was her eight month old son.

David Whitehead specifically incorporates herein by reference the facts and arguments supporting Argument I, the conspiracy charge. In addition, David Whitehead would specifically contend that there was no evidence that he knew that Karen Ordonez and her son were brought to the United States at a place other than a designated port of entry. Nor was there any evidence that he attempted to conceal anything. When Peterson left Martha and Ms. Ordonez in Boston and returned to North Carolina, Mr. Whitehead was asked to go to Boston to bring them back. Although he and his wife had an argument/altercation, and she did not return at that time, Mr. Whitehead drove Ms. Ordonez and her son to Fayetteville, North Carolina and let her out at the Cumberland County Sheriff's Department, where she was picked up by Mr. Peterson. The evidence indicates that Ms. Ordonez and her son had met with Immigration officials, were cleared to go to her uncle's residence in Dallas Texas, that she had remained in Texas for one or two months, and had flown to Boston prior to meeting Martha and Peterson. Therefore there is insufficient evidence that David Whitehead aided

and abetted bringing Ms. Ordonez and her son into the United States, or that he had any knowledge whatsoever where or how she actually entered the United States.

There are very few reported cases addressing the elements or issues in Counts 17 and 18, which are alleged to violate 8 U.S.C. § 1324(a)(1)(A)(i). (A-1). A district court case within the Fourth Circuit addressed the conspiracy statute and the substantive charges in United States v. McTague, 2017 WL 1378425 (W.D. VA). The district court held that because the superseding indictment did not allege that the defendants brought an alien into the United States in violation of law or at a place other than a designated port of entry, it lacked essential elements contained in § 1324(a)(1)(A)(i)-(iv) and must be dismissed. Pertinent language specifically addressing § 1324(a)(1)(A)(i) is repeated herein:

> "But it is not enough to allege that a person transported, harbored or induced an alien to enter or work in the United States. Subsections § 1324(a)(1)(A)(ii)(iii), and (iv) require that such acts be undertaken 'in violation of law,' which element is nowhere to be found in the indictment. While subsection § 1324(a)(1)(A)(i), concerning bringing an alien to the United States, does not contain the 'in violation of law' element, it does contain the wholly separate element that the alien be brought

> 'at a place other than a designated port of entry or place other than as designated by the Commissioner.' This element too is not found in Count Seven. The allegations set forth in the introduction to the Superseding Indictment do not fill in the elemental gap."

2017 WL 1378425 at *8.

David Whitehead is not alleging that the indictment in his case is insufficient on Counts 17 and 18. He merely cites the McTague case to demonstrate the importance of the elements herein. He urges that there was insufficient evidence that he knew Karen Ordonez and her son had entered the United States at a place other than a designated port of entry or that he willfully transported Karen Ordonez and her son from Boston to North Carolina knowing they had entered the United States at a place other than a designated port of entry.

Based on the foregoing, David Whitehead respectfully contends that Counts 17 and 18 should have been dismissed pursuant to his Rule 29 motion.

III. THE DISTRICT COURT ERRED IN DENYING THE DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL UNDER RULE 29 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE IN THAT THERE WAS INSUFFICIENT EVIDENCE THAT THE DEFENDANT KNOWINGLY TRANSFERRED MONETARY INSTRUMENTS AND FUNDS FROM A PLACE IN THE UNITED STATES TO A PLACE OUTSIDE THE UNITED STATES WITH THE INTENT TO PROMOTE AN UNLAWFUL ACTIVITY, TO WIT: KNOWING THAT A PERSON IS AN ALIEN, BRINGS OR ATTEMPTS TO BRING TO THE UNITED STATES SUCH PERSON AT A PLACE OTHER THAN A DESIGNATED PORT OF ENTRY, AS CHARGED IN COUNTS 36, 37, AND 40 OF THE INDICTMENT.

A. Standard of Review:

See standard of review in Argument 1.

B. Discussion:

Counts 36, 37 and 40 of the indictment charged David Whitehead with aiding and abetting money laundering in violation of 18 U.S.C. § 1956(a)(2)(A) and § 2. (A-3, 4). More particularly the indictment charged that Mr. Whitehead, aiding and abetting, did knowingly transport, transmit, and transfer monetary instruments and funds from a place in the United States, to a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, to wit: knowing that a person is an alien, brings to or attempts to bring to

the United States such person at a place other than a designated port of entry. (JA33-35).

18 U.S.C. § 1956(a)(2)(A) provides as follows:

> (a) (2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States-
>
> (A) with the intent to promote the carrying on of specified unlawful activity; . . . shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. (A-3).

Count 36 denominated a MoneyGram wire transfer in the amount of $500 on May 17, 2019, Count 37 denominated a MoneyGram wire transfer in the amount of $500 on May 17, 2019, and Count 40 denominated a MoneyGram wire transfer in the amount of $1,000 on May 30, 2019. (JA33-34).

The district court judge charged the jury on the money laundering counts substantially in conformity with the instruction requested by the Government. (JA278-279). There were no objections to the jury instructions. (JA281).

David Whitehead contends that the district court erred in denying his motion for judgment of acquittal on the money laundering counts. While there was some evidence that he assisted with sending out MoneyGrams from the United States to Mexico, there is insufficient evidence that he did so with the intent to promote the carrying on of a specified unlawful activity, to bring to the United States aliens with the knowledge that said aliens entered the United States at a place other than a designated port of entry.

As previously noted in Arguments I and II, Mr. Whitehead contends that there was insufficient evidence that he had any knowledge that Ms. Ordonez and her son came to the United States at a place other than a designated port of entry. The fact she was in the United States, had met with Immigration officials on several occasions, had stayed with her uncle in Texas for one or two months, and was eventually flown to Boston, Massachusetts support Mr. Whitehead's contention that he did not know she was an illegal alien or had the knowledge that she entered the United States at a place other than a designated port of entry. In fact, there is only vague evidence of where exactly she entered the United States, and there is no evidence that

David Whitehead was ever told where or how Ms. Ordonez and her son entered the United States.

Based on the above, the Defendant contends that the three money laundering counts should have been dismissed.

CONCLUSION

For the foregoing reasons, the Defendant-Appellant David Darnell Whitehead respectfully requests that his convictions be reversed, or that he be granted a new sentencing hearing.

Respectfully submitted this the 17th day of February, 2023.

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CERTIFICATE OF COMPLIANCE

This Brief of Appellant has been prepared using:

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Century;

14 Point Type Space.

EXCLUSIVE of the Table of Contents, Table of Authorities, Addendum, Certificate of Compliance and the Certificate of Filing and Service, this Brief contains less than 30 pages.

I understand that a material misrepresentation can result in the Court's striking the brief and imposing sanctions. If the Court so directs, I will provide an electronic version of the Brief and/or a copy of the word or line print-out.

/s/ Rudolph A. Ashton, III
Rudolph A. Ashton, III

CERTIFICATE OF FILING AND SERVICE

I hereby certify that I have this February 17, 2023, filed electronically using the Court's CM/ECF system which will send notification to all parties of record.

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ADDENDUM

aircraft shall be granted clearance pending the determination of the liability to the payment of such fine or while such fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of an amount sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the Commissioner.

(c) Remission or refund

Except as provided in subsection (e), such fine shall not be remitted or refunded, unless it appears to the satisfaction of the Attorney General that such person, and the owner, master, commanding officer, agent, charterer, and consignee of the vessel or aircraft, prior to the departure of the vessel or aircraft from the last port outside the United States, did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a valid passport or visa was required.

(d) Repealed. Pub.L. 104–208, Div. C, Title III, § 308(e)(13), Sept. 30, 1996, 110 Stat. 3009–620

(e) Reduction, refund, or waiver

A fine under this section may be reduced, refunded, or waived under such regulations as the Attorney General shall prescribe in cases in which—

(1) the carrier demonstrates that it had screened all passengers on the vessel or aircraft in accordance with procedures prescribed by the Attorney General, or

(2) circumstances exist that the Attorney General determines would justify such reduction, refund, or waiver.

(June 27, 1952, c. 477, Title II, c. 8, § 273, 66 Stat. 227; Pub.L. 101–649, Title II, § 201(b), Title V, § 543(a)(10), Nov. 29, 1990, 104 Stat. 5014, 5058; Pub.L. 102–232, Title III, § 306(c)(4)(D), Dec. 12, 1991, 105 Stat. 1752; Pub.L. 103–416, Title II, §§ 209(a), 216, 219(p), Oct. 25, 1994, 108 Stat. 4312, 4315, 4317; Pub.L. 104–208, Div. C, Title III, §§ 308(c)(3), (e)(13), 371(b)(8), Title VI, § 671(b)(6), (7), Sept. 30, 1996, 110 Stat. 3009–616, 3009–620, 3009–645, 3009–722.)

HISTORICAL NOTES

References in Text

This chapter, referred to in subsec. (a)(1), was in the original, "this Act", meaning Act June 27, 1952, c. 477, 66 Stat. 163, known as the Immigration and Nationality Act, which is classified principally to this chapter. For complete classification, see Short Title note set out under section 1101 of this title and Tables.

Effective and Applicability Provisions

1996 Acts. Amendment by section 308 of Div. C of Pub.L. 104–208 effective, with certain exceptions and subject to certain transitional rules, on the first day of the first month beginning more than 180 days after Sept. 30, 1996, see section 309 of Div. C of Pub.L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 371(b)(8) of Div. C of Pub.L. 104–208 effective Sept. 30, 1996, see section 371(d)(1) of Div. C of Pub.L. 104–208, set out as a note under section 1101 of this title.

Amendment by section 671(b)(6), (7) of Div. C of Pub.L. 104–208 effective as if included in the enactment of Pub.L. 103–416, which was approved Oct. 25, 1994, see section 671(b)(14) of Div. C of Pub.L. 104–208, set out as a note under section 1101 of this title.

1994 Acts. Section 209(b) of Pub.L. 103–416, as amended Pub.L. 104–208, Div. C, Title VI, § 671(b)(8), Sept. 30, 1996, 110 Stat. 3009–722, provided that: "The amendments made by this section [amending this section] shall apply with respect to aliens brought to the United States more than 60 days after the date of enactment of this Act [Oct. 25, 1994]."

[Amendment by section 671(b)(8) of Div. C of Pub.L. 104–208 effective as if included in the enactment of Pub.L. 103–416, which was approved Oct. 25, 1994, see section 671(b)(14) of Div. C of Pub.L. 104–208, set out as a note under section 1101 of this title.]

Amendment by section 219 of Pub.L. 103–416 effective as if included in the enactment of the Immigration Act of 1990, Pub.L. 101–649, 104 Stat. 4978, which was approved Nov. 29, 1990, except as otherwise specifically provided, see section 219(dd) of Pub.L. 103–416, set out as a note under section 1101 of this title.

1991 Acts. Amendments by sections 302 through 308 of Pub.L. 102–232, except as otherwise specifically provided, effective as if included in the enactment of Pub.L. 101–649, see section 310(1) of Pub.L. 102–232, set out as a note under section 1101 of this title.

1990 Acts. Amendment by Pub.L. 101–649 effective as of Nov. 29, 1990, see section 201(d) of Pub.L. 101–649, set out as a note under section 1187 of this title.

Amendment by section 543(a)(10) of Pub.L. 101–649 applicable to actions taken after Nov. 29, 1990, see section 543(c) of Pub.L. 101–649, set out as a note under section 1221 of this title.

Transfer of Functions

For abolition of Immigration and Naturalization Service, transfer of functions, and treatment of related references, see note set out under 8 U.S.C.A. § 1551.

Severability of Provisions

If any provision of Division C of Pub.L. 104–208 or the application of such provision to any person or circumstances is held to be unconstitutional, the remainder of Division C of Pub.L. 104–208 and the application of the provisions of Division C of Pub.L. 104–208 to any person or circumstance not to be affected thereby, see section 1(e) of Pub.L. 104–208, set out as a note under section 1101 of this title.

§ 1324. Bringing in and harboring certain aliens

(a) Criminal penalties

(1)(A) Any person who—

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard

of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under Title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under Title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of Title 18) to, or places in jeopardy the life of, any person, be fined under Title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under Title 18, or both.

(C) It is not a violation of clauses [1] (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs—

(A) be fined in accordance with Title 18 or imprisoned not more than one year, or both; or

(B) in the case of—

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry,

be fined under Title 18 and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3)(A) Any person who, during any 12–month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under Title 18 or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who—

(i) is an unauthorized alien (as defined in section 1324a(h)(3) of this title), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if—

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C)(i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

(b) Seizure and forfeiture

(1) In general

Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of a violation of subsection (a), the gross proceeds of such violation, and any property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture.

(2) Applicable procedures

Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of Title 18 relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Attorney General.

(3) Prima facie evidence in determinations of violations

In determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the alleged violation had not received prior official authorization to come to, enter, or reside in the United States or that such alien had come to, entered, or remained in the United States in violation of law:

sion, contracts for research with the Advisory Commission on Intergovernmental Relations and the National Research Council, definitions, appropriations, and termination of the Commission 60 days after submission of its final report.

Priority of State Laws

Enactment of this section as not indicating an intent on the part of the Congress to occupy the field in which this section operates to the exclusion of State or local law on the same subject matter, or to relieve any person of any obligation imposed by any State or local law, see section 811 of Pub.L. 91–452, set out as a Priority of State Laws note under section 1511 of this title.

Commission on the Review of the National Policy Toward Gambling

Sections 804 to 809 of Pub.L. 91–452 established the Commission on the Review of the National Policy Toward Gambling, provided for its membership and compensation of the members and the staff, empowered the Commission to subpoena witnesses and grant immunity, required the Commission to make a study of gambling in the United States and existing federal, state, and local policy and practices with respect to prohibition and taxation of gambling activities and to make a final report of its findings and recommendations to the President and to Congress within four years of its establishment, and provided for its termination sixty days after submission of the final report.

§ 1956. Laundering of monetary instruments

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

(A)(i) with the intent to promote the carrying on of specified unlawful activity; or

(ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or

(B) knowing that the transaction is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both. For purposes of this paragraph, a financial transaction shall be considered to be one involving the proceeds of specified unlawful activity if it is part of a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement.

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

(A) with the intent to promote the carrying on of specified unlawful activity; or

(B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—

(i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or

(ii) to avoid a transaction reporting requirement under State or Federal law,

shall be sentenced to a fine of not more than $500,000 or twice the value of the monetary instrument or funds involved in the transportation, transmission, or transfer, whichever is greater, or imprisonment for not more than twenty years, or both. For the purpose of the offense described in subparagraph (B), the defendant's knowledge may be established by proof that a law enforcement officer represented the matter specified in subparagraph (B) as true, and the defendant's subsequent statements or actions indicate that the defendant believed such representations to be true.

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term "represented" means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.

(b) **Penalties.**—

(1) **In general.**—Whoever conducts or attempts to conduct a transaction described in subsection (a)(1) or (a)(3), or section 1957, or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

(A) the value of the property, funds, or monetary instruments involved in the transaction; or

(B) $10,000.

(2) **Jurisdiction over foreign persons.**—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

Repealed

Rule 29(d) of Fed. Rules of Cr. Proc., amending Rules 12.2(c), 32(c)(2)(B), and 32.1(b) of such Rules and enacting note provisions under Rules 29, 32, and 32.1; amending sections 802, 812, 845, 873, 878, and 881 of Title 21; amending sections 524, 992 to 994, and 1921 of Title 28; amending sections 257, 300w–3, 300w–4, 9511, 10601, 10603, and 10604 of Title 42; and amending section 1472 of Title 49; repealing chapter 99 (sections 2031, 2032) and sections 4216 and 4217 of this title; enacting note provisions under sections 201, 203, 1791, 1792, 2241, 3141, 3143, 3552, 3553, 3556, 3561, 3563, 3564, 3579, 3583, 3603, 3624, 3672, 3673, and 5037 of this title, section 1921 of Title 28, and section 257 of Title 42; amending note provision under section 3551 of this title; and repealing note provision under section 3143 of this title] may be cited as the 'Criminal Law and Procedure Technical Amendments Act of 1986'."

1984 Acts. Pub.L. 98–473, Title II, § 200, Oct. 12, 1984, 98 Stat. 1976, provided that: "This title [Pub.L. 98–473, Title II, §§ 201–2304, Oct. 12, 1984, 98 Stat. 1976–2194] may be cited as the 'Comprehensive Crime Control Act of 1984'." See Tables for classifications.

§ 2. Principals

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

(June 25, 1948, c. 645, 62 Stat. 684; Oct. 31, 1951, c. 655, § 17b, 65 Stat. 717.)

§ 3. Accessory after the fact

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

(June 25, 1948, c. 645, 62 Stat. 684; Pub.L. 99–646, § 43, Nov. 10, 1986, 100 Stat. 3601; Pub.L. 101–647, Title XXXV, § 3502, Nov. 29, 1990, 104 Stat. 4921; Pub.L. 103–322, Title XXXIII, §§ 330011(h), 330016(2)(A), Sept. 13, 1994, 108 Stat. 2145, 2148.)

HISTORICAL NOTES

Effective and Applicability Provisions

1994 Amendments. Pub.L. 103–322, Title XXXIII, § 330011(h), Sept. 13, 1994, 108 Stat. 2145, provided in part that the amendment made by such section, amending section 3502 of Pub.L. 101–647 (which amended this section), was to take effect on the date section 3502 of Pub.L. 101–647 took effect; section 3502 of Pub.L. 101–647 took effect on the date of enactment of Pub.L. 101–647, which was approved Nov. 29, 1990.

§ 4. Misprision of felony

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined under this title or imprisoned not more than three years, or both.

(June 25, 1948, c. 645, 62 Stat. 684; Pub.L. 103–322, Title XXXIII, § 330016(1)(G), Sept. 13, 1994, 108 Stat. 2147.)

§ 5. United States defined

The term "United States", as used in this title in a territorial sense, includes all places and waters, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

(June 25, 1948, c. 645, 62 Stat. 685.)

HISTORICAL NOTES

References in Text

For definition of Canal Zone, referred to in text, see 22 U.S.C.A. § 3602(b).

§ 6. Department and agency defined

As used in this title:

The term "department" means one of the executive departments enumerated in section 1 of Title 5, unless the context shows that such term was intended to describe the executive, legislative, or judicial branches of the government.

The term "agency" includes any department, independent establishment, commission, administration, authority, board or bureau of the United States or any corporation in which the United States has a proprietary interest, unless the context shows that such term was intended to be used in a more limited sense.

(June 25, 1948, c. 645, 62 Stat. 685.)

HISTORICAL NOTES

References in Text

Section 1 of Title 5, referred to in text, was repealed by Pub.L. 89–554, § 8, Sept. 6, 1966, 80 Stat. 632, and reenacted by the first section thereof as 5 U.S.C.A. § 101.

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

(1) The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(2) Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.

(3) Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.