

11th Circuit Reversal Says Prosecutors Failed to Meet Burden of Proof

Katheryn Hayes Tucker, Daily Report
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Judge Charles R. Wilson, U.S. Court of Appeals for the Eleventh Circuit *Zach Porter/Daily Report*

Federal prosecutors in Miami got a smack down with a federal appeals court reversal saying they didn't do their job. Judge Charles Wilson of the U.S. Court of Appeals for the Eleventh Circuit ruled that the state had not met its burden of proof and tossed a drug trafficking conviction, freeing a man from a 12-year prison sentence.

"The burden is on the government to prove all elements of a crime beyond a reasonable doubt," Wilson wrote in the opening line. "When a man's liberty is at stake, we must be vigilant with this burden."

Judge Gerald Tjoflat and Judge Eduardo Robreno of the Eastern District of Pennsylvania concurred.

"The government failed to offer evidence from which a reasonable jury could find that Terry Pierre Louis had knowledge that the boxes placed in the backseat of his car contained a controlled substance," Wilson wrote. "Without proof of this essential element, the government has failed to meet its burden. Therefore, we must reverse."

The case was handled by Assistant U.S. Attorney Matthew John Langley of the Southern District of Florida. A spokesman said the U.S. Attorney's office "will not be commenting."

Louis was defended by Joseph Nascimento of Ross Amsel Raben Nascimento in Miami. Nascimento worked on the case with solo Benjamin Waxman of Miami.

Barring reconsideration, Nascimento said he expects his client will go free after serving 15 months. He said a reversal, especially on sufficiency issue, is unusual. "It's rare," he said. "As much as we thought we should win, it was still surprising."

As Wilson told the tale, the story started in September 2015 when U.S. Customs and Border Protection got a tip that a coastal freighter named the Ana Cecilia was going to be carrying narcotics upon returning to Miami from a trip to Haiti. When the boat arrived, customs agents boarded to search for drugs. This continued for four days. They found nothing. They set up surveillance.

Louis worked for the Ana Cecilia's owner, Ernsso Borgella, handling administrative tasks in an office. During the search, Louis boarded the ship briefly to deliver food to crew members who had been confined for days. During the surveillance, an agent saw the deck watchman go inside the ship and come out carrying two large cardboard boxes. A forklift picked up the two boxes and drove them off the boat. Borgella was following the forklift and speaking to its driver, who placed the boxes on the dock. An unidentified man covered them with a tarp.

Later, Wilson said, Borgella directed a white Nissan—driven by Louis—to park near the boxes, then opened a rear door on the passenger side. Two unidentified men loaded the boxes into the back seat. Louis drove slowly toward the front of the shipyard while Borgella walked along beside him.

One the Nissan was outside the front gate, lights and sirens surrounded it. Louis jumped out and ran. One of the agents chased him but lost him in the shipyard. Others found Borgella. They searched the Nissan and found two sealed boxes in the back seat containing 111 bricks of cocaine, Wilson wrote.

They charged Louis with possession with intent to distribute and conspiracy to possess with intent to distribute cocaine. After a two-day trial, Louis was convicted of both charges. Judge Donald Middlebrooks sentenced him to 151 months in prison.

Borgella got a lighter sentence after reaching a plea deal on the same charges plus others related to importing drugs. The boss got 108 months—four and a half years less than the employee he was directing, according to Wilson's description.

Wilson concluded that, while fleeing could be considered evidence that Louis knew the boxes contained some kind of contraband, the state never produced any evidence that he knew drugs were in the box.

"Louis was never completely left alone with the boxes," Wilson wrote. "This hardly supports a conclusion that Louis was sufficiently entrusted with the cocaine to establish his knowledge, and it is surely not enough to prove his knowledge beyond a reasonable doubt."

Wilson added, "Without this requisite showing of knowledge, the government has failed to prove every fact necessary to meet its burden."