UNREPORTED - NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 00-1989

GOVERNMENT OF THE VIRGIN ISLANDS

v.

BRYAN GLASGOW,

Appellant

On Appeal from the District Court of the Virgin Islands,
Appellate Division (Division of St. Thomas and St. John)
(D.C. Crim. No. 98-00168)
District Judges: Honorable Raymond L. Finch, Chief Judge,
Honorable Thomas K. Moore, and Honorable Maria M. Cabret,
sitting by designation

Submitted under Third Circuit LAR 34.1(a)
December 8, 2000

BEFORE: MANSMANN, ALITO, and GREENBERG, Circuit Judges

(Filed: December 19, 2000)

MEMORANDUM OPINION OF THE COURT

GREENBERG, Circuit Judge.

This matter comes on before this court on appeal from a judgment order of the District Court of the Virgin Islands, Appellate Division, Division of St. Thomas and St.

John, entered June 29, 2000, affirming a judgment of conviction and sentence entered by the Territorial Court of the Virgin Islands, Division of St. Thomas and St. John. Appellant Bryan Glasgow and two other defendants, Jason Penn and Quincy Carty, were tried on an amended information on various counts of first and second degree robbery of Charles Smith and Closette Brooks. At the conclusion of the government's case, the Territorial Court dismissed the charges that Glasgow had robbed Brooks and that Carty had robbed Smith. Following these dismissals Glasgow asked the court to advise the jury of the disposition of the dismissed charges, but the court refused. After the completion of the trial the court partially acquitted Glasgow of robbing Smith by taking currency and jewelry from him by redacting the language that he took currency. Thus, the charges submitted to the jury with respect to Glasgow were that he committed first and second degree robberies of Smith by taking jewelry from him.

At the end of the trial Glasgow again asked the court to advise the jury of the acquittals. The court, however, refused and instead told the jury that the dismissed charges "have been resolved." The jury then convicted the defendants of the remaining charges.

Subsequently the three defendants appealed to the district court. Glasgow raised the following issue:

> Did the trial court's refusal to inform the jury that the court had dismissed and acquitted Glasgow and appellant Carty of other charges in the information violate Glasgow's Fifth Amendment right to protection against double jeopardy?

The district court rejected this argument for the following reasons:

> Appellant Glasgow does not cite anything in the record or offer any other evidence that supports a finding that the jury, during its deliberations, considered anything other than the two remaining counts against Glasgow. Absent any evidence supporting a finding that the jury improperly considered the dismissed counts 3 and 5 and without any valid legal basis to find that the trial court violated Glasgow's constitutional right to protection against double jeopardy, the Court will affirm appellant Glasgow's conviction.

On appeal Glasgow argues that the trial court's refusal to instruct the jury that the "resolved" charges against him and Carty had in fact been dismissed violated his Fifth Amendment double jeopardy protections. Apparently his reasoning is that the jury might have convicted him of the charges that had been dismissed, for that possibility raises the only aspect of the Double Jeopardy Clause conceivably implicated here. See Smalis v. Pennsylvania, 476 U.S. 140, 106 S.Ct. 1745 (1986). Of course, the problem with Glasgow's argument is obvious. There is no reason at all to believe that the jury did not follow the court's instructions and consider only the counts submitted to it. See United States v. Gilsenan, 949 F.2d 90, 96 (3d Cir. 1991). Therefore, there is no double jeopardy problem here.

For the foregoing reasons, the judgment order of the district court entered June 29, 2000, will be affirmed as to Bryan Glasgow.

TO THE CLERK:

Please file the foregoing memorandum opinion.

/s/ Morton I. Greenberg
Circuit Judge

DATED: December 19, 2000

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JUDGMENT

This cause came on to be heard on the record from the District Court of the Virgin Islands, Appellate Division, (Division of St. Thomas and St. John) and was submitted under Third Circuit LAR 34.1(a) on December 8, 2000.

On consideration whereof, it is now hereby ADJUDGED and ORDERED by this court that the judgment order of the district court entered June 29, 2000, be and the same is hereby affirmed as to Bryan Glasgow.

ATTEST:

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Acting Clerk

DATED: December 19, 2000